

Medical liability crisis: an international problem

Dorland's Medical Dictionary defines a 'crisis' as the turning point of a disease for good or bad; especially a sudden change, usually for the better, in the course of a disease. There is no question that there is a 'disease of accountability and entitlement' within the medical–legal systems in the West. Much attention has been directed to the distress within the health system of the United States where medical liability premiums have escalated to such a degree that physicians are either limiting their practices or retiring altogether from the practice of medicine. Especially endangered are the specialties of obstetrics and gynecology, neurosurgery, perinatology, and other surgical specialties such as traumatology. According to the American Medical Association, 18 states face such premium increases that the delivery of medical care is being compromised. In addition, the Department of Health and Human Services in the US has released data showing that 'fully one third of hospitals saw an increase of 100 per cent or more in liability insurance premiums in 2002'. This resulted in more than one third of the institutions either curtailing or discontinuing certain medical services.¹ Current US newspaper editorials relate the issue of placing caps on the 'non-economic' (in legal parlance: pain and suffering) awards to no more than US\$250 000. Others relate the problem as being due to the poor investment policies of the insurance underwriters necessitating increased premiums, lack of proper policing of physician behavior, or the zeal of the plaintiff attorney in pursuing the most favorable percentage of the contingency fee which is directly deducted from the litigant's compensation award. The urgency of the situation in the US has led to the probable introduction of 'tort reform' legislation in the current session of the US Congress.

Our British colleagues report similar concerns regarding the escalating cost of medical liability insurance. According to the latest report of the Medical Protection Society (MPS), government action is urgently required to control the cost of litigation due to the fact that the 'growth of the compensation culture continues largely unabated'.² The MPS also reports that in the UK, the Institute of Actuaries published a report showing that compensation culture costs 10 billion pounds a year which is estimated to represent about one percent of the gross domestic product.² In France, obstetricians and gynecologists went on strike at the end of 2002 when their insurer, Ace Europe, discontinued their malpractice business.

One of the most respected internet search engines, under the citation 'cerebral palsy' (CP) lists a site of plaintiff's malpractice attorneys well above the sites of the United Cerebral Palsy or American Academy of Cerebral Palsy and Developmental Medicine. In the UK, the Scope website prominently lists an instructional brief directed to families concerning 'Clinical Negligence'.

On October 2, 1861 William John Little presented his seminal report to the Obstetrical Society of London entitled,

'On the influence of abnormal parturition: difficult labours, premature birth, and asphyxia neonatorum, on the mental and physical condition of the child, especially in relation to deformities'. In the third paragraph he notes 'the object of this communication is to show that the act of birth does *occasionally imprint* upon the nervous and muscular systems of the nascent infantile organism, very serious and peculiar evils'³ (italics mine). The impact of this description of 'Little's Disease' has had a pernicious influence on the current understanding of the etiology of the heterogeneous conditions included under the term 'cerebral palsy'.

As Stanley et al. in their text *Cerebral Palsies: Epidemiology and Causal Pathways* state: 'the litigation itself focuses attention on the intrapartum period, away from factors and events occurring earlier in development, where it is now believed that perhaps 80% of CP pathology is initiated'.⁴ To further delineate the limited influence of causation, an international consensus report entitled 'A template for defining a causal relation between acute intrapartum events and cerebral palsy' was published by the *BMJ* in 1999.⁵ Subsequent to this report, all clinicians should be aware of a recently published report by the collaboration of the American College of Obstetricians and Gynecologists and the American Academy of Pediatrics entitled 'Neonatal encephalopathy and cerebral palsy: defining the pathogenesis and pathophysiology'.⁶ The report lists criteria to define 'an acute intrapartum hypoxic event sufficient to cause cerebral palsy'. The report clearly indicates that if any one of the listed factors is absent then intrapartum hypoxia is not the cause of CP. The very survival of individual clinical practices, the treating hospitals, and the wide spectrum of outpatient facility services depends upon reform of the current climate of litigation which endangers all of our current health care systems.

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