

Tort Reform and You: Winners and Losers, Friends, Foes, and Facts of Life

Tort reform and self-referral. Both issues are near and dear to the hearts, reputations, and wallets of radiologists. Both issues entangle us with state and federal legislators. Both issues demand our participation in the political process and the cultivation of friends to effect change. Last month, I examined self-referral, and this month, I consider tort reform.

I wish that I had a quick fix for the medical liability crisis. I'm sure we all agree that patients truly harmed by medical malpractice are entitled to appropriate compensation, but this issue has spun out of control. We must have reform of the medical liability laws, so that patients continue to receive quality care. Reform is generally considered to be a cap on awards for noneconomic damages. Caps of \$250,000 are real. Caps of \$500,000 are questionable, and caps of \$1 million are illusory.

Radiologists understand this problem. Quality radiologists with no claims or with few claims cannot find insurance coverage, or their premiums have increased exorbitantly. The insurance companies blame the lawyers, and the lawyers point the finger at the insurance companies and their poor investments. Data from the neutral General Accounting Office suggest that insurance company expenditures on medical malpractice claims are the primary motivator of rate increases rather than poor investments. These claims constitute the greatest part of a malpractice carrier's costs.

The losers in this dispute are both radiologists and their patients. Radiologists lose when they are forced to either limit their practices

or leave localities vulnerable to litigation altogether for more affable practice environments. An example of practice limitation is mammography. In some locales, the compensation for mammography does not cover liability premiums. In some states, insurance rates drop or insurance becomes available if a radiologist agrees not to interpret mammograms. Radiologists, unlike attorneys, cannot recoup these increased expenses for insurance premiums with increased fees. Patients lose as well because they do not have access to necessary examinations and radiologists.

The winners are the attorneys, with upward of 40% of settlements and judgments taken by patients' attorneys rather than going to patients who endured alleged medical misadventures. Attorneys claim that medical liability reform would limit patients' abilities to obtain adequate compensation for pain and suffering. They allege an altruistic desire to police the medical profession through the litigation process. This claim is both flawed and disingenuous.

We must seize the moral and ethical high ground on this subject. We must acknowledge that unfortunately, radiologists, like the rest of the population, are not perfect, and medical misadventures do occur. When a misadventure is truly malpractice, not a difference of medical opinions or an accepted risk, compensation is due. We must, however, articulate that all poor outcomes are not malpractice. We must articulate to our patients and to legislators that the process for policing substandard medical practice should occur not through

litigation but through state medical boards. Through the medical board process, physicians practicing substandard medicine can be appropriately controlled and the public protected. Litigation only increases radiologists' liability premiums, limits access to health care, and perhaps changes physicians' geographic practice locations. Litigation does not effectively limit substandard practice, nor does it protect the public's health, safety, and welfare.

Who are our friends on tort reform, and where might we find new ones? Obviously, the ACR itself is one reliable ally. A college task force is dealing with this subject. Members have been surveyed, and the data were presented to the ACR Council at the May annual meeting. The college is committed to devoting the funds and energy necessary to achieve tort reform. The rest of medicine is also a friend. The American Medical Association, other medical specialties, and other medical organizations have devoted significant time and dollars toward accomplishing tort reform.

Patients, manufacturers, the business community, and legislators are potential friends, but they need cultivation. By honestly recognizing true medical malpractice, we may gain support or at least understanding from patients. By articulating health care access issues to these groups, we can explain the potential consequence of inappropriate litigation and awards. Access is the key. No one is likely to be sympathetic to radiologists' complaints about their insurance premiums. Many are likely to be sympathetic when health care is unavailable. Manufacturers and the

business community are also victims of inappropriate litigation, because higher premium costs may be passed on to them. These groups are a powerful lobby with Congress. The ACR has afforded itself of opportunities to align with these groups when appropriate.

Most Republicans, often supported by small business, generally align with the entire medical and business community and support tort reform. Most Democrats, supported by the political action committee (PAC) of the American Trial Lawyers Association, are not supportive of tort reform. Alternatively, the Democrats are very supportive of anti-self-referral legislation; but the Republicans, fearful of intrusion on small-business clinicians, oppose such legislation.

Who are our friends and who are our foes? Obviously, both friends

and foes are fleeting. We must view all of our major issues of concern from a broad perspective. Therefore, our political efforts through the Radiology Advocacy Alliance Political Action Committee and the ACR Association must be directed toward any member of Congress who can be influenced on either self-referral or tort reform.

Tort reform and self-referral are issues to be addressed and problems to be solved. These issues also illustrate three political facts of life. Fact one: we are all political players, whether we like it or not. Some individuals are passive players, allowing others to influence the outcomes of issues that are important to them. Passive players believe that they will win without political effort or contributions to a PAC, because their causes are right, just, and true. Alternatively, some individuals are active players, influenc-

ing legislation by contributing financially to the process and through personal lobbying efforts. They control the process rather than allowing others to control their fates. Fact two: on each political issue, self-referral and tort reform for example, there will be a political winner and a loser. Everyone believes that his or her cause is worthy. Everyone cannot win, and one does not win merely because one's cause is right, just, and true. Fact three: political action requires money, and money comes from contributions. This last statement should be obvious. It certainly is obvious to the trial lawyers who have raised more than \$3 million in their PAC in this election cycle. The average trial lawyer contributes to his or her PAC an average of four times the amount of the average radiologist. Whom do you think will be heard in Congress?

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