

Exploding Malpractice Rates and Their Relation to Hospital/Health System Strategy

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Rising malpractice rates for physicians and hospitals have received quite a bit of attention in recent months. Striking surgeons in West Virginia, legislative initiatives in a number of states, intense lobbying by concerned parties on all sides and front-page articles in newspapers throughout the country have highlighted this crisis.

It's not a theoretical discussion. Over the last year or so, a number of hospitals have closed either temporarily or permanently such services as trauma, surgery and OB. Indeed, according to the AHA *Trend Watch* June 2002 issue produced in conjunction with The Lewin Group in Falls Church, Virginia, 20 percent of hospitals have curtailed services to one degree or another because of problems in the professional liability market.

Additionally, 38 percent reported that it was more difficult to obtain physician coverage, 27 percent said physicians were relocating out of the area or retiring because of this; and 25 percent said the liability problems made it more difficult to attract physicians to work in their community. Six percent said they have completely closed or discontinued services as a result of escalating malpractice premiums.

The problem is not equalized nationwide. There are some states where the premiums are rising high enough and fast enough to indicate a crisis. In others, remarkably low. For example, in Dade/Broward Counties in Florida, premium rates for an Ob/Gyn in July 2001, according to *Trend Watch*, was \$202,949; in Dallas, Houston and Galveston it was \$160,746 and \$115,429 in New York City and several of the surrounding counties. By contrast, the lowest were in Indiana at \$13,874, Nebraska at \$12,288 and \$11,580 in South Dakota.

Geometrically escalating malpractice insurance premiums can have quite an impact on the hospital/health system's marketing position. After all, if a hospital experiences a drain of OB's because of doctors fleeing the area to lower malpractice communities, then births (revenues) are going to decline for that service line. Similarly, if a hospital has to curtail such key services as trauma or rural clinics, that doesn't further the institution's aim of being a central player in their community's health.

What Can Strategy, Marketing and Public Relations People Do About All This

At first glance, it might seem that the healthcare marketing community can do little about all this. The issue is much bigger than them. Indeed, says Kriss Barlow, the Hudson, Wisconsin-based Senior Consultant for the Corporate Health Group, "this is an issue for the senior leadership table; the CEO, chief medical officer and legal counsel."

However, she points out, "marketers and planners can keep a pulse on what is happening and filter information and support senior leadership. One thing they could do is maintain a clipping service to gather articles about the issue and pass them on to senior management."

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Additionally, they can work with those responsible for the hospital's lobbying effort, typically carried out by planning or legal, to craft arguments for political policy changes. There are statewide and national initiatives making their way through the political system that can be tracked and

commented upon. For example, during the last Congressional session there were bills introduced in both the House (Rep. James Greenwood, R-PA) and the Senate (Sen. John Ensign, R-NV) to tackle this problem. The House bill passed, the Senate didn't make it up for a vote. An aide to Senator Ensign says another attempt will most certainly be made in the 2003 Congress.

Among the most important things Barlow thinks the hospital marketing folks can do is to

work with physician relations in assisting physicians. She points to several areas of assistance: “You can have one or a few physicians who are affected, complain, but they might not be heard,” she says. “But, if the hospital says it on behalf of all its physicians, it will have a much greater impact.”

In pursuit of this, she says, hospital communicators can help educate the public about the true realities of physician finances. “There’s still a feeling among many that physicians are rich,” she says. “There’s two sides to the story.”

Pius, hospital communicators and physician relations people should be highly attuned to what their doctors are saying and what they’re not saying. “You may see a physician that’s depressed,” Barlow says. “Someone who’s not engaging like they used to.” One reason may be malpractice issues and the more the hospital can do to support that doctor’s advocacy the better it will be for its relations with that physician.

Trauma in Las Vegas

In the winter of 2001-2002, St. Paul Insurance Company pulled out of the medical liability market. This posed quite a challenge for physicians in the state. “Sixty percent of the doctors in Nevada had that coverage,” says Rick Plummer, Spokesperson for University Medical Center in Las Vegas. “Where it hit us was with our trauma orthopedic surgeons. We had 58 on staff and only one left when we closed the center in July.”

Specifically, he says, the remaining liability insurers told the doc’s that they would handle them at a higher price, but under one condition—that they cut out high risk procedures such as trauma. “We held our first press conference in February and had one or two a month,” he says.

While the issue got some attention, that’s exactly how it was viewed, as an issue that could be examined over time. But the situation at the hospital was more desperate and needed an immediate remedy. “It took closing the trauma center to get the attention of the Governor and the legislature,” he says.

When that closure happened in early July, Plummer was deluged with media requests, much of it national as “a lot of states were facing the same thing.”

The closure lasted 10 days. “We worked with the county commission to hire back many of the orthopedic surgeons as staff,” he says. “Because we’re a government agency, malpractice rates can’t shoot up. All damages are limited to \$50,000.”

Additionally, the legislature was called back into a special session. A cap on punitive damages for doctors that handle trauma calls was put into place.

But that did not include OB doctors. And, that is problematic for the Las Vegas community. Indeed, it certainly didn’t help area hospitals in their effort to present OB programs to area residents as more than 30 OB’s closed up shop in the city in recent months.

It also doesn’t help the image of Las Vegas as a city that can care for the health needs of its citizens to read the lead paragraph in the Thursday, August 29 issue of the Las Vegas Review-Journal: “A shortage of obstetricians makes Las Vegas one of the worst cities in the country for expectant mothers, a physicians organization says.”

“The way the insurance companies work here, OB’s are limited to 124 deliveries a year without a jump,” Plummer says. “When they go to 125, they experience a jump. We’re not impacted (negatively) because we’re staffed by the University School of Medicine. But we are getting a large increase in women looking for prenatal care services from us because they can’t find an OB.”

Florida: Another Hotbed

Holy Cross Hospital in Ft. Lauderdale, Florida, is in a community experiencing dramatic jumps in malpractice insurance rates. Maria Soldani, Executive Director of Marketing and Communications, says that the hospital is fully aware of the complexity of this problem and realizes there is no quick solution. However, that doesn’t mean the hospital is not taking action.

The hospital is spearheading an initiative “to make the patient part of the healthcare team. We’re focusing on patient safety. That’s helping us tremendously. It’s our effort to protect ourselves.”

Here’s the connection into malpractice. Certainly a focus on patient safety could reduce

incidents that could eventually proceed into lawsuits. Plus, research into malpractice claims shows that often suits happen because of poor communication with providers. By having patients in on the ground floor in a partnership with their healthcare team, the hope is that better communication will mean better care, higher patient satisfaction and less suits and consequently more modest premium rises than would otherwise apply.

There's also some very direct savings that such a program can potentially give. According to Bill Bell, General Counsel for the Florida Hospital Association in Tallahassee, most hospitals in the state are self-insured for malpractice up to a certain level (typically in the \$1 million to \$10 range) and then beyond, excess or reinsurance malpractice policies come into effect. That rate is determined on a region wide basis. Accordingly, a hospital's excellent record on malpractice may save it some money on the self-insurance side, but only contribute to the overall pie of the region for the actual malpractice premium calculation.

The other initiative that Holy Cross is taking to ease the malpractice crunch is with its medical staff that does the majority of their business with the hospital. "We've been able to work with them and our insurer to help get them better rates," she says.

Also working with its medical staff to help them find malpractice carriers that might be more reasonable is Broward General Medical Center, says Susan Chertoff, Regional Manager of Physician Services. "There are also Ob/Gyn's who form groups to buy malpractice to get a better rate," she says.

While Chertoff has seen the \$202,949 premium rate average statistic for Ob/Gyns in Dale/Broward counties, she reports that Broward General's Ob/Gyn's rates are in the \$80,000 to \$120,000 a year for physicians who have been delivering babies for more than five years. For newer physicians, the rates are much less.

Nevertheless, the hospital's Ob/Gyns are paying more for malpractice insurance than many other states. Malpractice rates do factor into the decision as to whether a physician will decide to settle in South Florida, but there are other considerations as well. "This may be where the doctor may want to live," she says. "They may have family here and simply want to lead their life in South Florida rather than North Dakota."

Hurting in Pennsylvania

Pennsylvania, particularly Philadelphia, has been hard hit on the malpractice front. At least three hospitals in the Philadelphia area have closed their OB services in recent months. Taking such a dramatic step as closing a service would hopefully draw public attention around this problem as it did in Las Vegas with University trauma service. It didn't happen that way here.

The hospitals put out the word about the closures, and then, nothing, says Alan Zuckerman, FACHE, FAAHC, Director for the Philadelphia-based Health Strategies & Solutions, Inc. "The public either didn't care, was disinterested or even opposed," he says. Those opposed felt that everyone at some point could be a patient in a malpractice lawsuit and they didn't want a limit on what they could collect."

Hurting the case for publicity in Philadelphia was surplus capacity for OB services in the city, Zuckerman believes. As that disappeared, little negative impact was perceived.

Specifically, Philadelphia is a city with many hospitals. If the hospital one-half mile closed its OB program, the patient could then go a mile or two away and get serviced, he says.

Nevertheless, the problem is real in this city. "A lot of physicians have closed up or relocated," he says. "Malpractice rates for hospitals have gone up geometrically and cut down on margins, which has occasioned further cost reductions."

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The state legislature recently put forth a number of proposals designed to ease the malpractice crisis. As the discussions and debates proceed in the state. Zuckerman feels that hospital and medical associations need to play an integral role in presenting their case so the best possible relief can be constructed.

So, what might be the role of the Pennsylvania hospital marketer in all this? Ron Melk, Director of Marketing & Communications at St. Mary Medical Center in Langhorne, Pennsylvania, says that the crisis over malpractice increases "forces you to divert energy into this issue. More has to be done to educate the public. The reams of paper that have been generated on this subject need to be boiled down to something the public understands."

During the winter of 2001-2002, Melk did a lot of this as the hospital orchestrated a media relations campaign around this issue.

Lost Revenue and New Strategic Initiatives in West Virginia

Jefferson Memorial Hospital in Ranson, West Virginia, has had to shift its market strategy as a result of high professional liability rates, says Pamela Holstein-Wallace, Community Relations and Development Director. "We operate 60 beds," she says. "In 2000, our liability insurance was \$265,000. It went to \$618,000 in 2001." That increase ate up half of the hospital's bottom line.

In addition to that, there has been revenue slippage from specialty outflow. A typical example, she says, is of a physician who was brought in as medical director of the hospital ICU in 1997 and was boarded in pulmonology and internal medicine. His professional liability (Holstein-Wallace prefers this term to malpractice insurance) rose each year, then doubled one year and looked like it would double again.

The physician chose to move his practice to the Baltimore area, where it was much cheaper to practice. "Some of his patients followed him to Baltimore, which is 65 miles away," she says. "Others went to Virginia because that's where the nearest pulmonologist was practicing. We have estimated that this doctor had a financial impact of \$500,000 in gross charges to the hospital over one year."

The loss goes beyond money. Now, Holstein-Wallace says, things this doctor could do at bedside in the hospital have to be done in the OR, adding to patient/health insurer cost. Also, for those patients having to travel, finding rides from people willing to spend an hour each way in transit to the doctor is harder.

"We are trying really hard to recruit and retain physicians," she says. "This is one example, but we have problems in other specialties."

To recapture some of the revenue lost by defections and higher professional liability rates, the hospital is looking at new services to provide. "One thing we're doing is trying to open a neuro-diagnostic sleep lab," she says. ■