Physicians attuned to the current state of the medical liability insurance system may consider themselves fortunate to call Wisconsin home. Wisconsin is one of only six states deemed stable by the American Medical Association (AMA) in terms of the burden that the cost of malpractice insurance is placing on clinicians.

Nineteen states have reached crisis status, according to the AMA, while the remaining 25 are beginning to show warning signs of nearing a crisis environment. Large and often arbitrary jury awards for non-economic damages are driving up the liability insurance rates in crisis states, which share the legislative trait of having no limit established for such awards. In 2002, rates for some physicians increased between 36 and 113 percent, according to information compiled by the AMA.

Physicians caught in the crisis—especially those in surgery subspecialties and obstetrics/gynecology—are often either limiting the services they provide, ceasing to care for high-risk patients, retiring earlier, or moving their practices to states that have not experienced spiking rates.

Others are “going bare”—canceling their malpractice coverage and personally accepting responsibility for potential legal fees, judgments, or settlements. In Florida, a reported 5 percent of physicians do not carry malpractice insurance. In Miami-Dade County, 20 percent have dropped coverage. Physicians who go bare typically place their assets in trusts or other shelters safe from creditors and legal rulings. This protection, however, can prevent patients with legitimate claims of malpractice from recovering damages.

A combination of two elements has helped Wisconsin stave off crisis to this point. In 1995, the state Legislature passed a hard cap (meaning one award per occurrence) of $350,000 on non-economic damages. The cap is indexed for inflation, however, and has already risen to $423,000.

The Injured Patients and Families Compensation Fund (formerly the Patients Compensation Fund) created in 1975 has also eased the burden by providing excess medical malpractice coverage for providers in the state.

As a result, Wisconsin has been an importer of physicians whose exodus from crisis states has resulted in an uneven national distribution of doctors in the “high-risk” specialties, according to Timothy T. Flaherty, MD, Medical College of Wisconsin Trustee and alumnus, and former trustee of the AMA. The situation presents a tragic irony for patients who have lost their physician due to the costs of a system ultimately designed to protect them from medical negligence.

Wisconsin’s self-guided fortune is not to be taken for granted. Stability in this professional liability climate is relative, and only sweeping reform has the power to deliver the country to a position of homeostasis.

One of the most disturbing overall by-products of our nation’s elevated litigiousness is the tendency for physicians to practice defensive medicine. Any time a physician feels compelled to perform tests or treatments primarily to avoid being sued rather than to advance the health of patients, the integrity of our profession takes a hit.

Three-fourths of physicians believe that concern about medical liability litigation has negatively affected their ability to provide quality care in recent years, according to AMA documentation. This also increases the cost of care for patients, though in the majority of malpractice cases, patient plaintiffs do not benefit.

According to AMA information, almost 70 percent of medical liability claims result in zero payments to patients, and less than 1 percent of cases result in trial victories. Only about 22 cents of every dollar from
malpractice insurance premiums goes to plaintiffs; the rest is swallowed by the system.

Meanwhile, medical liability adds many billions of dollars to health care costs each year. Insurance may always be a necessity for most physicians, but change to the system is essential to excise the waste.

California’s 29-year-old Medical Injury Compensation Reform Act (MICRA) remains the standard of successful tort reform. MICRA places a $250,000 cap on non-economic damages and features other components such as binding arbitration and a statute of limitations.

Since its inception, malpractice premiums in California have grown at one-third the rate of the rest of the country. Claims are also settled more quickly, and the state is now an appealing place to practice. In fact, 14.9 percent of medical students who completed the AAMC’s 2003 Graduate Questionnaire stated they planned to practice in California, by far the most popular location.

The liability system can only recuperate from crisis, however, if national reform is enacted. A measure based on MICRA, H.R. 5, failed last year. So the problem continues, affecting the future of medicine as well.

Half of medical students responding to an AMA survey indicated the current medical liability environment was a factor in their specialty choice, which could exacerbate the crisis in specialties that are already subject to high insurance rates.

Something as ancillary to healing as insurance premiums should not wield the power to drive physicians from their profession or even their location of preference. This broken litigation system and its spiraling consequences threatens doctor-patient trust, compromises care, and breeds dissatisfaction among us.

Socioeconomic factors will always affect the medical profession and delivery of our services. Liability insurance marks this era. The challenge remains to enact responsible reform where it is desperately needed, and to adapt when necessary to restore greater pride, efficacy, and satisfaction to the practice of medicine.
The mission of the *Wisconsin Medical Journal* is to provide a vehicle for professional communication and continuing education of Wisconsin physicians.

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