

US doctors debate refusing treatment to malpractice lawyers

Fred Charatan *Florida*

Animosities between doctors and medical malpractice lawyers has reached such a pitch in the United States that the American Medical Association last week debated a motion proposing that doctors should refuse medical treatment to such lawyers, their families, and employees except in emergencies.

Although the motion, brought by Dr Chris Hawk, a surgeon from South Carolina, was lost, some doctors felt the fact that it was proposed at all shows how bad relations between the professions have become. Doctors are angry, among other things, at the effect that malpractice awards are having on their insurance premiums.

Dr Clinton "Rick" Miller, a prominent neurosurgeon from New Hampshire, is one doctor who supports the idea of refusing treatment except in emergencies. In his 25 year career he has never been sued for malpractice. Nevertheless, last year he paid \$84 151 (£46 250;

€70 000) in medical liability insurance premiums. He said that his take home pay after taxes was \$64 000. "That's less than my malpractice premium," said Dr Miller. "This puts in perspective how desperate the situation is."

He has said publicly that he would not treat Tim Coughlin, president of the New Hampshire Trial Lawyers Association (except in an emergency), because Coughlin lobbied the legislature against limits on malpractice suits.

In an angry exchange of views in the *Portsmouth Herald* last December Dr Miller took issue with Coughlin's opposition to legal reform, claiming that Coughlin's articles in the newspaper "impugn[ed] the integrity and good intentions of both the medical community and the insurance industry."

The American Medical Association says that the size of malpractice insurance premiums has now reached crisis point in 20 states. Many doctors believe

that lawyers encourage patients to take them to court. According to the Physician Insurers Association of America, 70% of malpractice cases were dropped or dismissed in 2003, and a jury verdict for the plaintiff was reached in only 1% of cases.

Dr Donald J Palmisano, the association's president, said: "The AMA is disheartened that the medical liability environment in Massachusetts [the 20th state defined as in crisis] has deteriorated to the point where physicians are restricting services and patients are losing access to care. Until lawmakers enact proven reforms, our nation's crisis will only get worse."

Dr Hawk, the surgeon who proposed last week's motion and chairman of the association's Council of Scientific Affairs, first suggested not treating lawyers who brought malpractice cases in a speech to the South Carolina Medical Association convention last March.

When he repeated the proposal at the association's convention last week, however, he was denounced by 16 doctors, even after he had asked that it be withdrawn.

One correspondent emailed: "What Dr Hawk is proposing is

egregious, both hypocritically and Hippocratically."

Several neurosurgeons in Florida's wealthy Palm Beach county have scaled back their practices because of their concerns that emergency cases put them at higher risk of medical malpractice lawsuits. Only four neurosurgeons now handle emergency calls at the 13 hospitals in the county, increasingly leaving emergency rooms with no one available.

The American Medical Association has made medical liability reform its top priority. Congress has tried to pass meaningful reforms, pre-empting the role of the states. Last May the US House of Representatives passed the Health Act of 2004, by 229 votes to 197. It caps non-economic damages at \$250 000 (£136 000; €206 000) and would allocate damages in proportion to a party's degree of fault. But the legislation is stalled in the US Senate.

Dr Arthur Caplan, director of the Center for Bioethics, University of Pennsylvania, told the *BMJ* that "it is unethical to withhold treatment on the basis of a profession or an opinion." He added that doctors treat enemy combatants, including terrorists. □

Human Tissue Bill is modified because of research needs

Clare Dyer
legal correspondent, BMJ

The UK government has caved in to the demands of biomedical researchers and watered down controversial measures in its Human Tissue Bill that would have required the consent of patients for the storage and use for research of any human tissue or bodily fluids taken from living persons.

Scientists had warned that the requirements of the bill, introduced in response to an outcry over the widespread retention of children's organs without parents' consent, could prevent potentially life saving research.

They argued that obtaining express consent for the storage and use of tissue and bodily flu-

ids would be hugely costly in money and human resources. Some three million solid tissue samples and over 100 million blood samples are taken in the United Kingdom each year.

In its original form the bill made it a criminal offence, punishable by a maximum 12 months' prison sentence, for a doctor to use any leftover material from a living patient for research without the patient's written consent. Among the projects that would have been severely affected is the national anonymous tonsil archive, which hopes to collect 100 000 tonsils in an attempt to discover the incidence of Creutzfeldt-Jakob disease in the United Kingdom.

The government plans to



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amend the bill at report stage next week to allow research using material from living patients without consent but with safeguards. The research will have to be approved by a

research ethics committee, and there will be a requirement that the researcher must not possess any information that would enable the person from whom the tissue was taken to be identified.

Organisations that lobbied for the change include the BMA, the General Medical Council, the Medical Research Council, the Royal College of Pathologists, and the Wellcome Trust, the largest biomedical research charity in the United Kingdom.

Mark Walport, director of the Wellcome Trust, said, "This has been a priority for the Wellcome Trust, and we are delighted by these amendments. We now have a proper and sensible balance between protecting the rights and confidentiality of patients and their families and the need to safeguard research that will provide benefits for health in the future."

The bill will have its final stages in the House of Commons on 28 June and will then go to the House of Lords. (See p 1510.) □