

No-Fault Medical Malpractice Lecture - A Success



On Feb. 8, 1990, Professor Maxwell J. Mehlman, Director of the Law-Medicine Center of Case Western Research University School of Law, presented a lecture on the "Harvard Study", commonly called No-Fault Medical Malpractice. This is a 2.5 million dollar study which was mandated by the New York State Legislature in 1986 under the direction of the New York State Department of Health and its Commissioner, Dr. David Axelrod. Its purpose is to develop information to enable a comparison to be made between the current fault-based medical malpractice system and a hypothetical no-fault system resembling Workers' Compensation. Under no-fault, patients who were injured as a result of medical management would be compensated, regardless of whether or not their injury resulted from negligence of the physician or other health care provider.

The well received lecture drew a large audience, including many attorneys well-known in the field of medical malpractice, judges, the news media and a prominent delegation from the Nassau County Medical Society.

President Frank Yannelli introduced the guests and Elliott C. Winograd, Chairman of the Medical-Legal Committee, introduced the speaker.

According to statistics published by the Harvard Study, it appears that negligence by doctors and/or hospital staff members have contributed to approximately 7,000 hospital deaths and an additional 29,000 injuries in the year 1984, which was the time period that the study analyzed. However, of these combined 36,000 instances, only 3,600 lawsuits of medical malpractice were filed. While the Harvard study interim reports have been filed with the Department of Health, the final report (which is overdue by one year) may be filed sometime in May.

The Harvard Study did not take into account the "Medical Malpractice Reforms of 1985", in which the Office of Court Administration reports that filings in medical malpractice cases are down 56% on a statewide basis.

In Worker's Compensation cases, negligence is not an issue and the funding for the system comes strictly from the employer. Dr. Axelrod proposes the identical system for medical malpractice as the panacea for the "insurance crisis". What Dr. Axelrod failed to note was that it is expected that this system will raise malpractice premiums by 320%. In 1975, a similar study by the Harvard Study was conducted in California. The study revealed that for the year 1974, total collected medical malpractice premiums came to \$250 million, in the State of California, however, to fund such a system would cost \$800 million. Thus, the OB-GYN in 1990 who presently pays \$100,000 in premiums will now pay \$320,000.

Dr. Axelrod has publicly stated that he is presently seeking a no-fault medical malpractice system structured along the lines of Worker's Compensation and that he is willing to phase in such a system in cases of brain-damaged newborns similar to the "Birth-Related Neurological Injury Compensation Act" patterned after Florida and Virginia's present laws.

These two pieces of legislation are scheduled to be introduced by Dr. Axelrod during the 1990 New York State Legislative session. The Bar Association of Nassau County and the Medical-Legal Committee, as of this date, have not taken a formal position on the aforesaid legislation.

A future program based upon the "Birth Related Neurological Injury Compensation Act" is contemplated by Mr. Winograd sometime in late spring.