Large Medical Malpractice Law Suits Still A Problem In Maine, Massachusetts, New Hampshire, and Vermont

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The growing number of medical malpractice suits has been a longtime concern in the United States, and is documented as early as December 1957 in an article that states “the unprecedented rapid rise in the number of malpractice actions brought against physicians demands that practitioners of medicine and surgery take positive steps to ward off these law suits” (Ficarra, 1957). The article goes on further to say that “every time there is a financial settlement against a doctor, the premium on malpractice insurance rises” (Ficarra, 1957). Recent articles continue to express concern over the number of malpractice suits, increasing award amounts, and elevated malpractice insurance premiums (Jost, 2003; Thorpe, 2004; Jones et al., 2006), though none have addressed these issues in a specific geographic region.

We examined data from the National Practitioners Data Bank, a repository for information about medical malpractice suits that was started due to the rising number of malpractice suits and as a tracking system to monitor the quality of healthcare nationwide (HSRA, 2001). This report primarily focuses on medical malpractice trends in the states of Maine, Massachusetts, New Hampshire, and Vermont. We found that large and “mega” awards in Maine, Massachusetts, New Hampshire and Vermont continue to increase, but that small and medium awards continue to decline.

Small Medical Malpractice Awards Declining in Maine, Massachusetts, New Hampshire and Vermont

The number of small malpractice payments (amounts up to $1 million) in the New England region have declined steadily over the past 15 years. Payments below $1 million continue to drop from 541 malpractice suits in 1991 to 452 at the end of 2005 (Graph 1). This represents a 16% reduction in medical malpractice lawsuits in Maine, Massachusetts, New Hampshire and Vermont.

Graph 1:

Large and “Mega” Medical Malpractice Awards in Maine, Massachusetts, New Hampshire and Vermont

Large medical malpractice awards (greater than $1 million) in our New England region continue to grow (Graph 2), putting pressure on medical malpractice insurance carriers, and in turn, on medical practitioners and institutions. These large medical malpractice judgments have grown from 6 awards in 1991 to 28 awards in 2005.
Evaluating several categories of large malpractice awards ($1-2 million and $2 million plus), shows that each group has increased over the past 15 years. The following describes the increase in awards in Maine, Massachusetts, New Hampshire and Vermont:

<table>
<thead>
<tr>
<th>Category</th>
<th>1991</th>
<th>2005</th>
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<tbody>
<tr>
<td>$1 million to $2 million</td>
<td>5 awards</td>
<td>20 awards</td>
</tr>
<tr>
<td>Over $2 million</td>
<td>1 awards</td>
<td>8 awards</td>
</tr>
<tr>
<td><strong>Total Awards</strong></td>
<td><strong>6</strong></td>
<td><strong>28</strong></td>
</tr>
</tbody>
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Source: National Practitioners Data Bank

As shown in Table 1, the number of large malpractice awards has increased substantially, and although the rise in larger malpractice awards may not be characterized as skyrocketing, they identify a troubling trend. This trend has been blamed in part for the spike in the cost of insurance premiums which, in the U.S., have risen 20% each year since the turn of the new millennium (Jones et al., 2006).

Another concern regarding malpractice suits is the correlation with higher malpractice insurance premiums. Perhaps news of a few large awards are driving the costs of malpractice insurance – that companies are afraid of being hit with a large suit and compensate for this by sharply raising insurance premiums. Low return on companies’ investments or insurance companies having too much control over the healthcare industry may also be to blame (Jost, 2003). Several potential solutions have been proposed, including a cap for awards related to pain and suffering (Jost, 2003), arbitration requirements to cut court costs (Kohl, 2003), deterrents for frivolous lawsuits (Kohl, 2003), and institution of a no-fault claims system (Jost, 2003). Some combination of these and other methods may be necessary to control the costs of malpractice insurance. This is an important problem because higher premiums may be responsible for the recent increase in the number of early retirements, practice closings, and in some instances, for doctors turning away more difficult cases (Jost, 2003). Fewer doctors handling more cases could lead to an increase in medical accidents which would impel a cycle detrimental to
healthcare in the U.S. A system is in place to create an incentive and control the costs and incidence of malpractice injuries (CBO, 2004), but will take substantial time and resources to be implemented effectively.

This study was conducted to examine trends in malpractice awards in a specific geographic region: Maine, Massachusetts, New Hampshire, and Vermont. The decline in the number of small and medium awards may indicate that some strategies for controlling costs are successful, but we find the continued increase in large awards alarming. The increase in medical malpractice insurance premiums is also daunting and could be detrimental to the healthcare industry. Further analyses to help determine contributory factors will be necessary to limit costs associated with large and “mega” malpractice awards and to help soften their impact on the healthcare system. For example, we might next examine the population in this region to look at whether population trends are responsible for changes in malpractice cases. An increase in the number of malpractice attorneys or changes in marketing strategy may also contribute to the rise in malpractice awards. Better access to information (i.e. the internet, media coverage) regarding malpractice suits may also play a role. The National Practitioners Data Bank will be an important resource in the further analysis of malpractice trends that could lead to changes in the healthcare (or legal) system to better protect both patients and physicians.

References