

EDITORIAL

Freedom of the Press and the Public's Right to Know

In the United States, recent legislation permitted the establishment of a national practitioners' database, a euphemism for providing the public with a list of physicians who have had malpractice claims brought against them (whether the cases were settled, dismissed, or tried in court). On the surface, this might appear to be a good thing—a way for the public to learn about incompetent doctors. The problem is that malpractice claims have more to do with economic loss and bad results than incompetence. There is no evidence that I know of that even suggests that the courtroom is the proper venue to assess medical competence. Nor is there any evidence that those physicians who are sued are any more or less competent than those who are not.

Nevertheless, according to the law, the public has the right to know. And the press has the freedom to publish. Recently, a major New York newspaper printed an article describing physicians with the highest number of malpractice claims. I read that article. There were some highly respected physicians whose overall competence is beyond reproach. I know because I've worked with them. The article provided enough detailed information to allow me to formulate an opinion, and it was very clear that the doctors were sued because of bad outcomes and, perhaps, arrogance. Most of the cases did not go to trial; they were either settled out of court or dismissed.

The public interprets settlements as an admission of guilt. To anyone who has ever been on the defense side of litigation in the American court system, "settling out of court" is an act of sanity. In most malpractice cases, the defendant has little to gain. Whether innocent or guilty, it is simply too expensive (in time, money, and aggravation) to fight. If you lose (or settle), you lose, but the insurance company pays. Even if you win, you lose because you still get on the list of those "bad doctors," and you often end up spending more time and money than if you'd just settled. Either way your malpractice insurance premium may go up.

So what's the answer? 1) Don't publish the list. It should be confidential information unless there is a judicial verdict; and 2) reform the tort system. (I'll do that in my next editorial.)

Jerry G. Blaivas, M.D.
Editor-in-Chief