

## **THE SUN SENTINEL, October 30, 1989**

**“Malpractice crisis eases across state”**

**By Diane Hirth**

Tallahassee – two and a half years ago, pregnant women from Palm Beach County came to the state Capitol to protest. They said no doctor wanted to deliver their babies.

Today, Florida’s medical malpractice crisis is easing.

In the summer of 1987, the crisis had reached a crescendo. Emergency services were being curtailed at many Broward County hospitals. Tourists were warned by Dade County’s medical association president that “they may not be able to get treated.”

Wildly escalating malpractice insurance rates were blamed for an unprecedented reluctance among physicians to do risky procedures such a childbirth, bone repair, brain surgery and accident victim care. Major medical malpractice insurers prepared to pull out of Florida.

But much has changed since those crisis days:

Thousands of doctors this year received decreases in their malpractice insurance rates.

Fewer patients are filing lawsuits.

The number of paid negligence claims against physicians is down.

The average award collected in lawsuits by medical malpractice victims has dropped slightly.

Companies are seeking permission from the state to come to Florida to sell medical malpractice insurance.

What Dr. Robert Hoover, president of the Florida Obstetrics and Gynecology Society, pays for insurance remains substantial: \$63,000.00 a year. Yet that is 10 percent lower than last year.

“It means we don’t have to raise (fees). We can hang in there, and there will be a little cushion to survive inflation,” said Hoover, who practices in Winter Park.

”I would sum it up by saying there never was a crisis.” Said lawyer Sheldon Schlesinger of Fort Lauderdale, noted for winning large medical malpractice awards. “It was a political crisis, created by the insurance industry in an attempt to restrict claims in the field of medical malpractice. To some extent, it was successful.”

“We reduced our rates in 1989. We expect to reduce them again in 1990, so things are clearly getting better,” said Bob White, claims director for Physicians Protective Trust Fund of Coral Gables, which insures about 5,700 doctors. “It’s not fast enough for doctors, however.”

Although the situation has improved, no one is crediting the most controversial reform of February, 1988, when the Legislature during a special session declared, “there is in Florida a financial crisis in the medical liability insurance industry,” and passed 63 pages of new statutes.

Caps of \$250,000 to \$350,000 on “pain and suffering” damages were authorized by legislators for medical malpractice lawsuits in which either side had offered to accept arbitration.

But the caps mean nothing, say doctors, insurance companies and plaintiff’s lawyers.

Virtually no medical malpractice cases are being settled under this system of arbitration, which is an incentive to accept limits on damages. Basically, whenever it is in one side’s interest to bypass a trial, the other side has the advantage – and will not submit to arbitration.

“Things of this sort, until you try them you don’t know,” said former state legislator, Sam Bell, author of the 1988 reforms. “Some of those things are psychology, and one of the buzz words that the doctors said they had to have was ‘caps’ so we gave ‘em caps.”

What has been helpful is a less flashy change made in 1988. Before a medical malpractice lawsuit can be filed now, an expert medical opinion must be submitted. The independent expert must substantiate that the typical standard of medical care was violated.

Insurers say this pre-suit expert opinion is weeding out frivolous claims. But plaintiff’s lawyers say the expense of obtaining the opinion also is eliminating potentially valid claims.

“The number of claims is no longer rising. It’s leveled off and may be down slightly,” said Don Brewer, vice president for claims of Florida Physicians Insurance Co. of Jacksonville. That company’s request to cut next year’s medical malpractice rates by 8.5 percent has been approved.

“Most reputable attorneys with experience have always gotten an expert opinion in advance anyway,” said Rep. Lois Frankel, D- West Palm Beach, a personal injury lawyer who voted against the 1988 medical malpractice reforms.

From the perspective of Dr. Mathis Becker, who performs lung cancer and vascular surgeries, all of this is misleading.

Fifteen years ago Becker, currently the president-elect of the Broward County Medical Association, paid \$1,000 for malpractice insurance. In 1988, his premium was about to jump to \$90,000 a year for just \$250,000 worth of coverage. He stopped buying insurance. He says this case is typical of many South Florida doctors.

“Rates have stabilized at such a high level they don’t remain attractive,” he said.

Noting that he now turns away complicated cases involving children or pregnant women, the Plantation doctor said anxiety about being sued is as demoralizing as potential financial liability.

“I can’t get people to understand what it’s like to go into an emergency room at 3 a.m. and make a big decision on something that could come back to haunt you,” Becker said.

He cannot help comparing himself with a California surgeon in the same specialty. They attended medical school together. His friend is now paying \$25,000 a year for malpractice insurance.

Indeed, California’s \$250,000 limit on “pain and suffering” damages in all medical malpractice cases is the only sort of medicine that inspires faith in Florida doctors.

Last November, 57 percent of Florida voters rejected Amendment 10, a proposal to cap “pain and suffering” damages at \$100,000 in all civil negligence cases, not just medical malpractice. About \$16 million was spent, mostly on TV advertisements, as doctors fought lawyers over the issue.

Already, the state’s medical community is talking of coming back in 1992 with another, perhaps higher, proposed constitutional cap on damages.

Said Dr. Joseph Phillips, a radiologist who is president of the Palm Beach County Medical Society: “The fact that we’ve got a real bad problem that’s slightly better - that’s definitely not a minor problem.”

Florida Medical Association lobbyist James Thrasher, who helped write the 1988 reforms but always considered them insufficient, insists that a stifling of health care costs will not occur without reducing doctors’ financial liability.

Thrasher pointed to health insurance costs (up at least 20 percent on the average this year in Florida). He also mentioned indigent health care (for which the state is millions of dollars short of adequately funding).

At Physicians Protective Trust Fund, insurance rates are highest for doctors in Broward and Dade counties. A neurosurgeon in those counties can pay as much as \$179,942 a year, a gynecologist/obstetrician, \$129,719; a general surgeon, \$75,961; a family practitioner, 15,679.

The number of doctors willing to deliver babies in South Florida apparently continues to shrink.

“Every year, less (Palm Beach County) obstetricians are open than the year before” Phillips said.

But one reform from the 1988 special legislative session has yet to be tried – and it could bring doctors back into delivery rooms.; Legislators copied a Virginia plan that offers no-fault compensation for babies brain-damaged during birth. However, no case has yet been filed under this law, which took effect in January.

“It’s a great law. I love it. I want to keep it alive,” Hoover said.

For ex-legislator Bell, the dying down of the medical malpractice furor is proof that compromises less drastic than limiting patients’ rights can work. “Any time you whip people into a frenzy, the only solutions in that atmosphere are simplistic solutions; it rarely solves a complex situation in an equitable way,” he said.

But radiologist Phillips said, “Every physician has paranoia. Maybe the legal system has backed off a little bit, formally and informally. They (lawyers) were doing too well, so....they decided to take a year’s vacation and then come back and start hitting (us) again.”