

The Medical Liability Environment in San Juan: Results of a Survey

Norma I. Cruz, MD

Background: A survey was conducted to evaluate the effect that the current medical liability environment has had on physicians in San Juan, Puerto Rico.

Methods: In August 2008 a questionnaire consisting of 15 items which evaluated medical liability was mailed to all physicians in the San Juan District. The questionnaire requested information on basic demographics, medical specialty, insurance coverage, changes made in medical practice to decrease medical liability risk, malpractice claims received during the last ten years, and whether awards exceeding insurance coverage were paid. Physicians were requested to return the completed questionnaires by FAX or mail.

Results: There were 951 completed questionnaires returned. The survey indicated that 70% of physicians have made changes in their medical practices to decrease medical liability risk. Currently, 48% of physicians do not accept emergency cases and 50% do not accept high risk patients. Malpractice claims were received at least once in the previous ten years by 40% of the physicians. The awards requested by these claims exceeded the insurance coverage 75% of the time. After the final court decision was reached, 20% of the payments exceeded physicians' insurance coverage.

Conclusions: The adverse medical liability environment has affected the majority of physicians in San Juan, leading 70% of them to make changes in their practices to decrease the liability risk. As a result of these changes, the number of physicians willing to care for high risk and emergency patients has decreased significantly. [*PR Health Sci J* 2010;1:66-69]

Key words: Medical liability, Malpractice

The medical liability environment is causing a health care crisis in Puerto Rico and the United States. Adverse legal environments have caused physicians to retire early, curtail higher-risk services, decrease their availability to emergency patients or move to states with less liability exposure, thus further decreasing the medical care available to patients. Puerto Rico has a rate of 5.6 malpractice award payments per 100,000 people, while the average across the United States is 2.4 per 100,000 (1). However, in Puerto Rico the average malpractice award payment is \$66,761 which is lower than the \$285,218 average award payment in the United States (1).

The U.S. Department of Health and Human Services has estimated that medical liability costs add between \$60 billion and \$108 billion to the total cost of health care each year (2). Escalating health care costs are significantly tied to medical liability costs and the important role of medical liability reform in federal health care reform has gained support (3).

In an effort to evaluate the effect that the current adverse medical liability environment has had on physicians in the San Juan area, a survey was performed in the fall of 2008.

Methods

The Puerto Rico College of Physicians and Surgeons, a government mandated physicians' organization, with compulsory membership in order to practice medicine in the Commonwealth of Puerto Rico, divides the island geographically into 12 districts for statistical data collection. The District of San Juan includes the municipalities of San Juan, Guaynabo, and Trujillo Alto. This district has 40% of all the physicians in Puerto Rico and periodically surveys issues of importance to the area, such as medical liability for example.

Plastic Surgery Division, Department of Surgery, University of Puerto Rico School of Medicine

Presented at the Annual Meeting of the San Juan District, PR College of Physicians and Surgeons, February 1, 2009 and at the PR Chapter of the American College of Surgeons, F.L. Raffucci Surgical Research Forum, February 19, 2009, San Juan, PR. Financial support for this project was provided by the San Juan District, PR College of Physicians and Surgeons.

Address correspondence to: Norma I. Cruz, MD, Plastic Surgery Division, Univ. of PR School of Medicine, P.O. Box 365067, San Juan, PR 00936-5067. E-mail: normacruz01@prtc.net

In August 2008 a questionnaire consisting of 15 items which evaluated medical liability was mailed to all physicians in the San Juan District (Table 1). The questionnaire requested information on basic demographics, medical specialty, insurance and malpractice claims experience, changes made in their practice to decrease medical liability risk, and if they were deciding to relocate, leave, or restrict their practice in response to liability concerns. The physicians were requested to return the completed questionnaires by FAX or mail to the main office of the Puerto Rico College of Physicians and Surgeons. Multiple follow-up contacts were made with non-respondents by mail and telephone over the next two months. Respondents were also given the option of completing the survey online, and 1% of respondents did so.

Table 1. Medical liability questionnaire.

1. Age: _____

2. Gender: Female Male

3. Number of years in practice: _____

4. Indicate your medical specialty (if any):

General Medicine Family Medicine

Specialist Physician:

Anesthesia Surgery Ob-Gyn

Orthopedics Other _____

5. Professional liability insurance carrier: _____

6. Professional liability coverage:

100,000 - 300,000 1,000,000 - 3,000,000

250,000 - 500,000 Other _____

7. Annual premium of your professional liability insurance: \$ _____

8. Do you have “umbrella” coverage for amounts in excess of the basic insurance coverage?

No Yes

Amount of coverage: \$ _____ Cost of the umbrella coverage: \$ _____

9. Have you made changes to your practice because of the medical liability crisis?

No Yes

10. Indicate all the changes you are considering because of the medical liability crisis:

Not covering emergency rooms Closing the office

Not accepting high-risk patients Relocate to another state

Stop performing surgery Retire early

11. The current medical liability crisis has caused me:

Depression Need for treatment (psychiatric/psychological)

Anxiety Family problems

Insomnia No problems at all

12. Have you been sued in a professional liability case in the last 10 years?

No Yes

13. If the answer to the above question was Yes. Were you sued in excess of your coverage?

No Yes N/A

14. In the last ten 10 years, have you had to pay an award or settle for an amount in excess of your insurance coverage?

No Yes N/A

All analyses were made with the statistical software program SPSS (version 12.0: SPSS, Inc. Chicago, IL). Comparisons among the subgroups for categorical variables (expressed as frequencies and percentages) were assessed by Fisher’s exact test. Differences between groups were declared to be statistically significant at $p < 0.05$.

Results

There were 951 completed questionnaires returned. Since we successfully mailed the questionnaire to 3,148 physicians, we estimated that 30% of the group participated in the survey. The mean age of the responders was 53 ± 12 and 74% were males. The mean time in practice was 22 ± 12 years, and 87% were specialists. The distribution of medical specialties in the group is indicated in Table 2.

Table 2. Distribution of medical specialties in the survey group.

Anesthesia	4%
Surgery	14%
Ob/Gyn	7%
Orthopedics	6%
Other specialty	56%
Family medicine	5%
General practice	8%
Total (n = 951)	100%

The main professional liability insurance carrier was SIMED (76%) followed by Triple S (13%). Umbrella coverage, in addition to basic liability insurance, was carried by only 8% of the responders. The information obtained in our survey regarding insurance carriers, premiums paid and coverage is shown in Table 3.

Change in medical practice to decrease medical liability risk was made by 70% of the physicians. Currently, 48% of physicians do not accept emergency cases and 50% do not accept high risk patients. If we add the responders that indicated they plan to “close their office”, “leave Puerto Rico”, or “retire”, it appears that Puerto Rico would lose 57% of its medical manpower (Table 4).

Self-reported psychological effects of the medical liability crisis by the physicians participating in the survey are shown in Table 5. Anxiety was reported by 58% of physicians, constituting the most frequently reported problem resulting from the stress of the high liability risk.

Malpractice claims were received at least once in the previous ten years by 40% of the physicians (Table 6). Analyzing the high risk specialties independently, the survey found that 64% of surgeons, 63% of orthopedists and 57% of obstetric/gynecology (ob-gyn) specialists received malpractice claims during the study period (Table 7). As subgroups, surgery, orthopedics and ob-gyn

received a significantly higher ($p < 0.05$) percentage of liability claims than the overall group.

The awards requested by medical liability claims in our survey exceeded the insurance coverage 75% of the time. After the final court decision was reached, 20% of the payments exceeded physicians' insurance coverage.

Table 3. Insurance carriers used and coverage indicated by survey participants (n = 951).

Insurance Company	
SIMED	76%
Triple S	13%
Other	9%
None	2%
Mean annual premium paid	\$4,984 ± 5,201
Coverage	
\$100,000 - 300,000	86%
\$250,000 - 500,000	5%
\$1,000,000 - 3,000,000	2%
Other	7%
Umbrella coverage	
Yes	8%
No	92%
Mean umbrella coverage (when present)	\$1,000,000 - \$3,000,000
Mean annual premium of umbrella	\$6,680 ± \$4,423

Table 4. Changes to medical practice because of the medical liability crisis (n = 951).

Have made changes to their practice to reduce liability risk	70%
Not covering emergency room	48%
Not accepting high risk-patients	50%
Has stopped performing surgery	16%
Closing the office	16%
Relocate	19%
Retire early	22%

Table 5. Percentage of self-reported psychological effects of the medical liability crisis on physicians.

Anxiety	58%
Insomnia	24%
Family problems	22%
Depression	18%
Need for treatment (psychiatric/psychological)	6%
No problems at all	40%

Table 6. Professional liability claims in our survey.

Physicians who indicated having received claims in the previous ten years	380 (40%)
Award requested in the claim exceeded coverage	285 (75%)
Final award granted exceeded the insurance coverage	76 (20%)

Table 7. Distribution of professional liability claims by specialty in our survey (n = 951). As subgroups, surgery, orthopedics, and ob-gyn received a significantly ($p < 0.05$) higher percentage of liability claims than the overall group.

	Received a claim
Overall group	40%
Subgroups	
Anesthesia	35%
Surgery	64%
Orthopedics	63%
Ob-Gyn	57%
Other specialty	34%
Family medicine	19%
General practice	19%

Discussion

As reported by others, physicians' most prevalent response to liability concerns was to restrict the scope of practice by not offering high-risk services (4-12). In the San Juan District area 50% of physicians do not accept high-risk cases. In Pennsylvania, considered one of the "crisis" states by the American Medical Association (AMA) (13) it has been reported that 43% of physicians have eliminated the high-risk aspect of practice (4). In the state of Pennsylvania nearly half of the specialists had been named in a malpractice suit in the previous three years, and only 12% had never been sued (4). The AMA has placed 21 states in the crisis category. Only seven states are in the reform category, usually because caps on total or non-economic damage were passed into state laws. Puerto Rico is in the neutral category according to the AMA.

In the 2006 Jackson & Coker survey 67% of crisis-state respondents, and 64% of all respondents, indicated that the medical malpractice environment has caused them to change how they treat patients or to stop performing certain procedures (14).

The loss of medical manpower has also been an important issue. The number of professionals who were driven out of practice because of the high liability cost, creating specialist shortages and access-to-care problems has been measured in several states (4,10). In our survey 57% of the participants indicated that they were considering closing their office, relocating or retirement.

A study of the medical and hospital professional liability situation in Puerto Rico from 1990 to 1996 indicated that during the seven year period 3,506 cases were closed against physicians and institutions (15). That study indicated that \$56.3 million were paid in compensations during the seven year period. The study also stated that the risk of a legal claim was greater for surgeons and emergency medicine physicians. Our survey supports the finding, since overall 40% of the physicians in our study received malpractice claims in the previous ten years but this increased to 64% for surgeons, a difference that

was statistically significant ($p < 0.05$). Surgeons are among those at highest risk for malpractice claims and most affected by rising insurance premiums. Our study did not identify the emergency medicine physicians who were placed in the category of "other", and therefore could not be evaluated as an independent group.

Conclusions

The adverse medical liability environment has affected the majority of physicians in San Juan leading 70% of them to make changes in their practices to decrease the liability risk. As a result of these changes the number of physicians willing to care for high-risk and emergency patients has decreased significantly.

Resumen

Introducción: Se realizó una encuesta para evaluar el efecto que ha tenido el ambiente de alto riesgo médico legal en los médicos de San Juan, Puerto Rico. **Método:** En agosto del 2008 se envió por correo a todos los médicos del Distrito de San Juan, un cuestionario sobre reclamaciones por servicios profesionales que consistía de 15 preguntas. El cuestionario solicitaba datos demográficos básicos, especialidad, cubierta de seguro, los cambios realizados para disminuir el riesgo, si tuvo demandas en los últimos 10 años y si la cantidad pagada fue mayor a la cubierta de seguro. Una vez completado el cuestionario se solicitó que lo devolvieran por correo o fax. **Resultados:** Se recibieron un total de 951 cuestionarios contestados por los médicos de San Juan. El 70% de los médicos participantes indicaron que han alterado su práctica médica para disminuir el riesgo de reclamaciones por responsabilidad profesional. Actualmente 48% de los médicos no atienden emergencias y 50% no aceptan tratar pacientes de alto riesgo. En cuanto a la frecuencia de reclamaciones, un 40% de los médicos reportaron haber recibido reclamaciones por responsabilidad profesional durante los últimos 10 años. El 75% de las reclamaciones reportadas fueron por una cantidad mayor a la cubierta de seguro del médico y en 20% de las reclamaciones el médico tuvo que pagar una cantidad que excedía su cubierta de seguro. **Conclusión:** El alto riesgo de

reclamaciones por responsabilidad profesional ha afectado la práctica de 70% de los médicos de San Juan. Como resultado del adverso clima médico legal, la disponibilidad de médicos especialistas que cubran emergencias y casos de alto riesgo ha disminuido significativamente.

References

1. The National Report Card on the State of Emergency Medicine 2009: Evaluating the Emergency Care Environment State by State. American College of Emergency Physicians. Accessed July 18, 2009. Available from: URL: <http://www.emreportcard.org>.
2. Office of the Assistant Secretary for Planning and Evaluation. Addressing the New Health Care Crisis: Reforming the Medical Litigation System to Improve the Quality of Health Care. Washington, DC. U.S. Department of Health and Human Services. March 3, 2003.
3. Mello MM, Brennan TA. The role of medical liability reform in federal health care reform. *N Engl J Med* 2009;361:1-3.
4. Mello MM, Studdert DM, DesRoches CM, Peugh J, Zapert K, Brennan TA, Sage WM. Effects of a malpractice crisis on specialty supply and patient access to care. *Ann Surg* 2005;42:621-628.
5. Guirguis-Blake J, Fryer GE, Phillips RL, Szabat R., Gree LA. The US Medical Liability System: evidence for legislative reform. *Ann Fam Med* 2006;4:240-246.
6. Brennan TA, Leape LL, Laird NM, Hebert L, Localio AR, Lawthers AG, Newhouse JP, Weller PC, Hiatt HH. *N Engl J Med* 1991;324:370-376.
7. Kachalia A, Mello M, Brennan T, Studdert D. Beyond negligence: avoidability and medical injury. *Soc Sci Med* 2008;66:387-402.
8. Mello MM, Studdert DM, Brennan TA. The new medical malpractice crisis. *N Engl J Med* 2003;348:2281-2284.
9. Rosenblatt RA, Detering B. Changing patterns of obstetric practice in Washington State: the impact of tort reform. *Fam Med* 1988;20:101-107.
10. Kessler DP, Sage WM, Becker DJ. Impact of malpractice reforms on supply of physician services. *JAMA* 2005;293:2618-2625.
11. Gius MP. An examination of the determinants of physicians supply at state level. *J Business and Economics Studies* 2000;6:73-79.
12. Studdert DM, Mello MM, Brennan TA. Medical Malpractice. *N Engl J Med* 2004;350:283-292.
13. National Physician Survey on Professional Medical Liability. AMA. Accessed July 19, 2009. Available from: URL: <http://www.asahq.org/news/Patients%20losing%20access%20survey%20April03.pdf>.
14. Medical Liability Survey 2006. Jackson & Coker. Accessed July 18, 2009. Available from: URL: <http://www.jacksoncoker.com/physician-career-resources/surveys/2006-Medical-Malpractice-Survey.pdf>.
15. Brau RH, Díaz C, Hawayek J, Lojo JJ, Malaret GE, Ramos-Barroso A, Rodríguez-Ortiz P. Medical negligence in Puerto Rico: 1990-1996. *P R Health Sci J* 1998;17:55-67.