Why 'malpractice' has got to go

As Peter A. Schwartz, MD, made clear in last month's guest editorial, physicians across the country face a serious crisis. Not only are medical liability insurance premiums skyrocketing, but insurers are beginning to pull out of areas where their profit-making ability appears most threatened. This has left many physicians high and dry, lacking any liability coverage at all.

A number of factors converged to create this "perfect storm" of a crisis: ever-increasing monetary awards in medical liability cases, a tightening of the reinsurance market in the aftermath of September 11, and the sudden withdrawal of several large insurers from the medical liability field.

Dr. Schwartz and other authorities see tort reform as the only solution. This year the American College of Obstetricians and Gynecologists (ACOG), the American Medical Association (AMA), and other specialty societies formed a steering committee to coordinate national and state efforts to reform professional liability law. Their key goal: placing caps on non-economic damages such as pain and suffering. These caps clearly work. In California, where state law prohibits jury awards exceeding $250,000 for non-economic damages, liability premiums are much lower than in neighboring states such as Nevada, where no such caps exist.

The trial attorney lobby opposes tort reform in many locales. For example, in Nevada, lawyers lay the blame for the liability predicament on underwriters, claiming that they insure "bad" doctors, then leave the market when the consequences become untenable. One major carrier counters that, in Nevada, it pays $1.88 in settlements for every $1 in premiums—largely because jury awards are so high. In Wisconsin, where judgments are lower, the same underwriter notes, the company is generating positive reserves.

ACOG is leading an effort to retire the malpractice misnomer, urging that the term "medical professional liability" be used instead.

Clearly, this crisis is the top administrative concern in the field of OBG. Not only does it limit our ability to practice medicine, it also jeopardizes the health of our patients—and their infants. As one obstetrician pointed out, when established physicians are left in the lurch, without liability coverage, their patients generally must turn to on-call doctors who have no knowledge of their history or special concerns.

Physicians haven't been helped by the fact that professional liability insurance is typically referred to as "malpractice" coverage. As anyone familiar with medical practice knows, most cases alleging malpractice actually involve doctors operating within the standards of care, who are sued because of

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adverse outcomes associated with the treatment of diseases. ACOG is leading an effort to retire the malpractice misnomer, urging that the term "medical professional liability" be used instead.

In support of this effort, we have decided to rename one of our best-read columns. With this issue of OBG MANAGEMENT, "Malpractice Casebook" becomes "Medical Verdicts," a name chosen after a survey of 300 loyal readers. It may seem like a trivial modification, but enormous shifts in attitude often begin with incremental changes—and this one was not taken lightly, since "Casebook" has thrived for more than a decade. By eliminating the word "malpractice" from our pages, we hope to foster a shift in perception and help pave the way for some long-awaited reform.

In all other respects, "Medical Verdicts" remains unchanged, offering the same succinct summaries of professional liability cases in the field of OBG. We hope you'll continue giving it your enthusiastic attention. ■

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