

Some say availability, access to physicians are at risk

by DEVIN COMISKEY

Part one in a series examining the effects of rising malpractice insurance premiums in Connecticut on Wilton's physicians.

Some highly specialized physicians must pay tens of thousands of dollars per year to maintain their coverage. This may drive many of them either out of state or

from practicing medicine altogether. The problem is all too real for many doctors who live in Wilton and practice in the area.

In September, Gov. Rowland

surprised lawmakers by calling for a quick resolution on the matter, which included a \$250,000 cap proposal on damage awards.

Despite the governor's insistence,

however, the matter was not taken up in the October special legislative session in Hartford and was put on life support until this year.

On Dec. 19, a state legislative

report recommended that a \$3-million emergency fund be created to help doctors pay for rising

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"We will see a sudden loss of physicians. Instead of a slow exodus, it will be immediate."

That prediction comes from Dr. Frank Garofalo, a 15-year board-certified urologist and president of the Norwalk Medical Society, in reaction to skyrocketing malpractice insurance premiums for Connecticut's physicians.

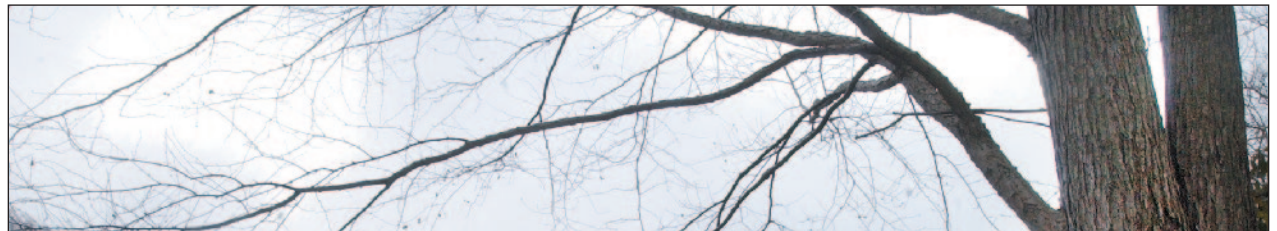
Doctors from around the state are facing a real threat to their livelihoods due to rising malpractice insurance premiums and a lack of insurance availability, physicians have told The Bulletin.

AS WEIR FARM RECALLS EARLIER ERA

Public is asked for input on restoration

by JEFF YATES

Residents curious as to how Wilton looked back in the good old days may soon get a chance to see just that. Weir Farm is considering restoration and rehabilitation work



MALPRACTICE INSURANCE: AN AILING DIAGNOSIS?

Doctors and lawyers clash over elusive remedies

by **DEVIN COMISKEY**

This is part two in a series examining the effects of rising malpractice insurance premiums in Connecticut on Wilton's physicians.

Last week, The Bulletin

looked at the effects of rising malpractice insurance premiums on physicians in Connecticut and several proposals brought forth by one Wilton doctor, Frank Garofalo, a 15-year board-certified urologist and president of the Norwalk Medical Society, who practices out of Norwalk

Hospital, and state Rep. Toni Boucher (R-143rd), who is a driving force behind tort reform in Connecticut.

This week, two more physicians from Wilton speak out in favor of legislation to change the legal landscape in Connecticut and the head of the Connecticut

Trial Lawyers Association clarifies that group's position on the matter.

While no solution appears to be within reach, the fallout from this debate will have implications outside the medical field in the state. The outcome just might determine the future of civil liti-

gation and HMOs altogether.

'Attorneys should pay'

Dr. Peter Dodds of Wilton has been practicing urology in Norwalk for 22 years. He is chief of urology at Norwalk Hospital and a member of the American Urological Association. Last year his malpractice insurance

premium rose 30%. In 2004 it's 41%. He said it costs \$47,000 per doctor per \$1 million per year in coverage. "It's getting to a critical point," he warned.

"There's even been a thought about cost-sharing among doctors so those who pay huge pre-

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Doctors and lawyers clash over elusive remedies

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miums, like neurosurgeons, aren't hit as hard. But that misses the point that it's the family care physicians and internists who can't afford their premiums now. They're the lowest-wage earners," he said.

"We're living in an area where it's hard to attract internists because of the cost of living and costs of practicing medicine have become burdensome. There's a major crisis coming with internists and specialists."

Dr. Dodds said he has two areas of concern. First, that most doctors can only afford the minimum amount of coverage. Second, doctors are now put in a position where their personal property is at risk. He said that threat is often made by attorneys.

"Doctors are refusing to defend themselves at all, that's why there have been so many settlements. They're afraid of losing their own property. If that starts happening, there's going to be a mass exodus, even if doctors are at the peak of their careers, or they will go into teaching positions where hospitals pick up the tab for insurance," he said.

"I don't know if caps are the fairest way. It also may be too late because it does nothing to affect the present. There's going to be a major problem in two to three years, because that's how long it would take to see any changes take effect," he said.

Dr. Dodds said attorneys ignoring the Good Faith Certificate requirement passed in 1986 is one reason a large number of frivolous malpractice suits are filed in Connecticut.

"It's an honor code that attorneys say they have contacted a health care provider that agrees malpractice has been done and the case has merit. No judge has ever enforced this in Connecticut. Judges are not willing to enforce the Good Faith Review. The loophole in the law is such that it says the attorney must *state* they had a review, but not actually *get* one," he said.

He said he knew of at least one case locally where the attorney didn't even get a copy of the person's medical records from the doctor before filing a lawsuit.

"The problem with litigation, even when there is a legitimate case, are the ancillary people who get sued as well, which could include nurses, anesthesiologist, etc. That's one of the issues: the tremendous *costs* of defending a lawsuit. CMIC estimates that around 60% of the medical liability lawsuits that have been filed in the past 10 years have been dropped. The cost of defense is enormous. It ranges from \$5,000 for a simple deposition to \$150,000 for defense during a trial," he said. "Approximately 70% of the verdicts by jury are decided in favor of the defendant (doctors)."

"Cases can drag on for years. What people don't see is the emotional and personal toll a frivolous malpractice suit can have on a reputable doctor, ranging from severe depression and anxiety to loss of wages due to time spent defending a case," he said.

"We ask that attorneys take responsibility for their conduct. The plaintiff's attorney should

have to pay the costs of defending a bad malpractice case as well as loss of wages. I don't think doctors should be treated any more special than anyone else. This problem isn't limited to just medical liability," said Dr. Dodds.

He cited a recent case of a two-year-old model in Greenwich whose mother is suing the city of Stamford for lost wages and negligence because the child ran into a chain link fence and cut his forehead. "If negligence is found, then the city should pay. But, why should the people of Stamford have to pay to defend the case? There is no responsibility taken for filing bad lawsuits," he said.

Dr. Dodds recently found a clear answer as to how and why lawsuits are flooding the legal system, not only in Connecticut, but around the nation, from Judge Robert Satter, who was also an attorney and Connecticut state representative.

A passage in a book written by Judge Satter in 1990 called *Doing Justice - A Trial Judge at Work*, struck a chord with Dr. Dodds. It says, "Payment is also submission to a form of extortion. Plaintiffs' lawyers know the burden they impose on defendants by bringing such cases, and they cynically demand a tribute to grant releases."

Dr. Dodds said, "Often, plaintiffs and attorneys leave court *knowing* an injustice occurred! Large companies, like WalMart, are more likely to settle case because it's often cheaper than defending against them. But the insurance companies for doctors will fight.

"Last year in Connecticut, 'tort reform' allowed attorneys to take 40% plus expenses. That was to legitimize their breaking of the earlier statute. It was no reform at all. There is a two-year statute of limitations, which is the time a patient would know whether or not anything has gone wrong. They were given an extra three months in which to perform a good faith consultation. They often show no signs of that activity," he said. "The Trial Lawyers Association says we have tort reform, but it's not reform at all."

One solution Dr. Dodds feels would stem the tide of litigation against doctors is fairly simple. "Attorneys should have to pay the defense costs and time lost from work if they are found not to have filed a good faith review. There's no true advocacy for doctors."

He said one of the things that doctors also worry about is word about a frivolous lawsuit getting out into the press. "It can do tremendous damage to a physician's reputation, often when he has done nothing wrong.

"Many doctors are deeply affected by these lawsuits. And that *should* happen if it's a legitimate case. But, if it's not, why should the doctor have to suffer and pay for it?" he said.

Dr. Dodds' future practicing medicine in Connecticut is still unclear in the coming years. "I don't know if the premiums are going to go up every year or not. As of now, I am not planning to leave. The thing that does worry me is that attachment of personal property loss to a lawsuit. I would think about retiring immediately from private practice. I'd

do that tomorrow if that happened," he said.

"I know of one doctor who actually left the state because of malpractice premiums. I know of five or six who have left private practice or cut back on their services. Two were obstetricians. They, as far as I'm concerned, were two of the most popular around. If it were 'marginal' doctors, that would be one thing. The lawsuits are not doing that. They are causing good doctors to retire earlier than they normally would," he said.

Common ground

Despite a seemingly united stand against the Connecticut Trial Lawyers Association, there may be some light at the end of this proverbial tunnel. According to Kathleen Natri, current president of the CTLA, there is plenty of common ground to work with.

"The Trial Lawyers Association agrees the doctors face a problem with increasing malpractice premiums and reduced payments from HMOs.

Our feeling, however, is that the number of verdicts, claims or jury awards play no role in solving the problem," she said.

"What happened is that the economy went south and the insurance companies lost a lot of money. One of the problems is the lack of carriers in Connecticut. The doctors don't really have any way to fight this. There's no real competition," said Ms. Natri. "The important thing we keep focusing on is that we shouldn't be making this a profession-specific problem. Why shouldn't doctors be as accountable as anyone else?"

Ms. Natri cited statistics provided to the CTLA by the Connecticut Medical Insurance Company that she says shows the problem isn't as overblown as some may portray it to be.

"CMIC covers approximately 1,700 physicians in the state. The average premium is under \$26,000 per year. Ninety percent of the premiums are less than \$50,000 per year. When you put it in perspective, it's a crisis for a

very small group of doctors," she said.

When asked whether or not she knew of any attorneys who have sought a Good Faith Certificate, Ms. Natri said she had not. However, she does in fact support legislation to strengthen the current loophole in the law.

"We do support a strengthening of the Good Faith Certificate. As it stands now, it's not clear you need written approval. The problem is that it can be signed without violating any rules," she said.

Ms. Natri said she had "no idea" how much money had been spent on lobbying in Hartford last year. "We have a contract with a lobbying firm that's paid on an annual basis. It's the same cost no matter what. If they spend 100 hours or 1,000 hours, it's the same cost," she said.

While Ms. Natri said the CTLA is opposed to any sort of medical court, as proposed by the Fairfield County Medical Association, the group is inter-

ested in another option. "We would support some sort of pre-suit mediation or pre-trial process or arbitration. The whole process would be more effective in weeding out bad cases," she said. "We oppose anything that would eliminate a patient's right to a fair trial by jury, like a medical court."

The CTLA is also "opposed to any form of award caps," according to Ms. Natri, such as the \$250,000 cap proposed by Gov. Rowland in September or the \$350,000 cap supported by Rep. Boucher. This appears to be one of the major sticking points in getting any reform legislation passed in the foreseeable future.

However, Ms. Natri offers a possible ray of hope.

"We see new ideas almost every day. It's a moving target. I think cooler heads ought to prevail and believe something can be done without removing victims' rights," she said. "I support some sort of effort that would appease both sides."

Working to save lives while looking for legal remedies

by DEVIN COMISKEY

who live in Wilton.

This is the final part in a series examining the effects of rising malpractice insurance premiums in Connecticut on Wilton's physicians.

In the last two weeks, The Bulletin has looked at the effects of rising malpractice insurance premiums on physicians in Connecticut, specifically those

Dr. Peter Dodds, chief of urology at Norwalk Hospital, discussed his views on what many are calling a "pending crisis" in the state. Kathleen Natri, president of the Connecticut Trial Lawyers Association, discussed common ground both sides agree on as well as the opposition the CTLA has towards non-economic damage award caps — a key hurdle in this debate — or a med-

ical court system.

This week, the series concludes with a focus on the impacts of rising malpractice premiums on a Wilton physician who is involved in women's health care, and the emergence of new legislation proposed by the Fairfield County Medical Association.

Losing doctors and options

Dr. Kelly Harkins of Wilton is a radiologist specializing in

mammography. She works in the Stamford Health System as part of Stamford Radiological Associates. Her malpractice insurance premium is going up 30% in 2004.

"It affects me every single day. It hurts us in the way we practice. My husband is a cardiothoracic surgeon and his premium went up even more this year. I have several surgeon friends who are considering leaving the state

and practicing in the Midwest."

Dr. Harkins said she participates in meetings of the Fairfield County Medical Association and other groups whose representatives are in contact with state legislators. "We are also up against the lawyers and they seem to have deep pockets. As physicians, this is not something we're used to dealing with. We're more interested in treating our patients."

"We're losing people because it's becoming unaffordable to live here now (because of the rising premiums)," she said.

Dr. Harkins said the current legal climate in Connecticut now dictates the way patients are treated. "The way I practice now is directed by the possibility that I can be sued any day. You have to be very, very careful. It's very

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Working to save lives while looking for legal remedies

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difficult because every single patient we have represents a possible lawsuit. For example, if a patient comes in with dense breast tissue, we'll still do an ultra-sound. We often do ultrasounds and order MRIs. We're doing more for each patient," she said.

Dr. Harkins said the risk of mammograms no longer being used is real. Mammograms are a primary means for detecting breast cancer but not 100% accurate, thus the inherent risk a patient will sue because of a missed diagnosis or false reading.

"It's extremely stressful because we never know who is going to sue us," she added.

"We're talking about people's lives here," she said. "We have a screening tool that saves lives, but it's in danger. It's not a perfect tool, but it still has value. The CMIC (Connecticut Medical Insurance Company) is already giving discounts for *not* reading mammograms," Dr. Harkins said.

"This is hurting everybody. Individuals and businesses. Companies that want to provide health care to their employees can't because it's too expensive. I know a lot of people who can't afford the insurance any more," she said. "The patients are going

to be the ones who lose out in the long run," she said.

"As a patient advocate, this is a real problem," said Dr. Harkins.

To give an idea of the impact rising malpractice premiums has had on her field, Dr. Harkins said more than half of the fellowships in mammography went unfilled last year in Connecticut.

On Dec. 19, 2003, a state legislative report recommended that a \$3-million emergency fund be created to help doctors pay for rising medical malpractice insurance premiums. According to the Associated Press, the fund would be raised from fees assessed to doctors, hospitals and lawyers.

The report also suggested further study of alternatives to malpractice lawsuits, such as a medical court or arbitration board several groups are proposing, and a "no-fault" approach to malpractice insurance.

Amy Cole, director of governmental affairs and community relations for the Fairfield County Medical Association in Trumbull, said the association is working hard to fight the rising malpractice premiums. (See accompanying chart.)

"We've written a formal response to the report. In addition drafted an omnibus piece of legislation that we'll try to initiate with the Public Health Committee, with the help of state Rep. Jack Stone (R-134th

Trumbull) and hopefully others," said Ms. Cole.

She said the FCMA is looking

for additional support from other legislators from around the state.

"One of the things the FCMA

is very serious about is the issue of patient safety and quality of care, so we've made some sug-

gestions on what to do in the current system to try and make that system work. The public is, rightfully so, concerned. They want it to be more safe and efficient," she said. "We want legislation to address deficiencies in the current system."

"We've also put together components of a tort reform initiative, 'tweaking' statutes, so that their original intent is how they're actually used. Adding, of course the limit on non-economic damages," said Ms. Cole. "We know it's a tough, tough decision for the legislature to make, but in the absence of any other solution, we have absolute proof around the country that it (caps) works. They continue to say there isn't any proof, but there is. I don't know why they keep saying it."

Ms. Cole is referring to the impact damage award caps had in California. After damage awards were capped in the mid-90's, premiums during the period of 1996 through 2002 rose 167%. During that same period, premiums went up by 505% in the rest of the country.

"We've got to get the premiums stabilized," said Ms. Cole.

The FCMA will be hosting its annual legislation dinner on March 8 in Norwalk where the discussion will be limited to the issue of medical malpractice insurance premiums in the state.

Medical liability reform ideas

Here is a summary of key items for medical liability reform legislation proposed by Fairfield County Medical Association

1. Premium relief:

\$250,000 limit on non-economic damages. (The Connecticut State Medical Society has stated and we agree if another alternative will provide rate relief, it would most certainly be considered.)

2. Adjustments to existing statutes:

- a. Improve upon certificate of merit
- b. Reduce or eliminate the offer of judgment interest penalty
- c. Mandate pre-screening panels if any party so requests. Discoverable.

d. Amend the contingency fee schedule to make clear it is mandatory

e. Medical expert testimony — Connecticut license, same specialty

f. Mandatory adherence to joint and several liability

g. Mandatory periodic payments over \$200,000

3. Promoting patient safety/quality of care:

- a. Comprehensive database for physician identification, including complaints, settlements and award payments

b. Develop disciplinary/screening guidelines to identify errors that violate the standard of care

c. Construct physician review committees to participate in screening/disciplinary process

d. Provide whistleblower-type protections

e. Mandate continuing medical education for all physicians

4. Long-term solutions to remove medical liability claims from courts:

a. Alternate dispute resolution — arbitration for quick and fair recovery

b. Workers' compensation type of no-fault when no negligence

c. Special medical liability courts

5. Public policy to encourage physician volunteers:

a. Extend Good Samaritan law

b. Reduce licensure fee for retired physicians

6. Insurance reform:

a. Require insurers who leave marketplace to provide tail, no additional charge (coverage for previous incidents)

b. Lower state requirement for mandatory insurance to match state insurance fund — \$300,000; hospitals, insurers must accept

Source: Amy Cole, director of governmental affairs and community relations for the Fairfield County Medical Association