Dubin calls on CMPA to eliminate fee differentials, adopt flat fee for all physicians

Features

Chroniques

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In brief

CHARLES DUBIN'S MASSIVE REVIEW OF THE CANADIAN MEDICAL PROTECTIVE ASSOCIATION supports the CMPA's policy of maintaining a large reserve for malpractice coverage, but calls for a major overhaul of the association's fee structure. Regardless of the risks their practices pose, says Dubin, all doctors should pay the same fee in order to keep physicians practising in high-risk specialties such as obstetrics and orthopedic surgery. The alternative, said CMPA president Dr. Bill Thomas, is an exodus from certain specialties because of massive bills for malpractice insurance.

En bref

À LA SUITE DE L'ÉTUDE D'ENVERGURE QU'IL A FAITE DE L'ASSOCIATION CANADIENNE de protection médicale, Charles Dubin appuie la politique de l'ACPM qui consiste à maintenir une importante réserve de protection contre la faute professionnelle, mais il préconise une refonte majeure de la grille des frais de l'Association. Quels que soient les risques posés par la pratique, affirme Dubin, tous les médecins devraient payer les mêmes primes afin que l'on puisse en garder dans des spécialités à risque élevé comme l'obstétrique et la chirurgie orthopédique. La solution de rechange, affirme le Dr Bill Thomas, président de l'ACPM, est l'abandon de certaines spécialités à cause du fardeau énorme des factures d'assurance contre la faute professionnelle.

Charles Dubin has given the Canadian Medical Protective Association (CMPA) high marks for the malpractice coverage it provides for almost 60 000 Canadian physicians, but he warns that its differential fee schedule is no longer supportable.

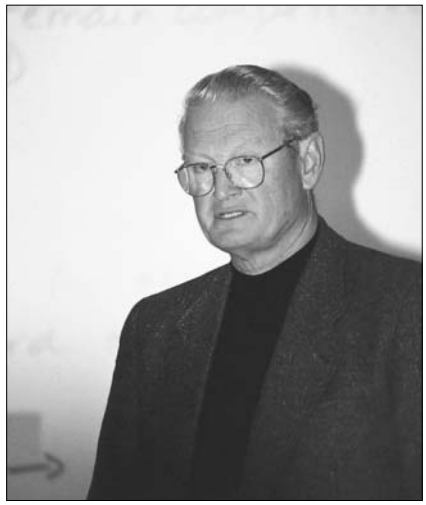
The current method used to determine fees, adopted in 1984, charges physicians according to the malpractice risks their practices pose. Thus, in 1996 a family physician paid $1932 for CMPA coverage, while an obstetrician paid $23 340. That fee structure may be both fair and actuarially sound, Ontario's former chief justice stated, but it also has the potential to harm medicine seriously by driving physicians from high-risk areas of practice "and creating large deficiencies in the availability of qualified specialists. This is unacceptable."

In his *Independent Review of the Canadian Medical Protective Association*, released Jan. 28, Dubin proposed that the CMPA return to the uniform-fee structure that was in place prior to 1984. If this system is adopted, all physicians will pay a fee of roughly $4000. Dubin says this would represent a "vital reduction" for the high-risk specialties. However, he also acknowledges that it would represent an increase of $2000 or more for others, such as family physicians.

"I understand that under the present compensation scheme for practitioners that any increase in overhead that cannot be passed on to patients represents a potential hardship. Still, in establishing a uniform fee, I urge the medical profession to share the responsibility of the cost of professional indemnity in the spirit of collegiality and in the interests of ensuring the continued provision of high-

quality health care both for the sake of the profession and for the sake of all Canadians."

Vancouver obstetrician Bill Thomas, the CMPA president who also chaired the board of MD Management Ltd., the CMA's financial subsidiary, for 13 years, thinks the uniform-fee proposal is crucial. He warned of a potential "exodus" from his and other specialties if the existing fee structure is maintained. He also said the existing fees make it difficult for high-risk specialties to attract new recruits. "Personally, I think it offers a reasonable approach to a difficult problem," he said. "It is very sensible."



Dr. Bill Thomas: a reasonable approach

Dubin also recommended that the CMPA end its policy of providing free membership to doctors who have completed 35 years with the organization. About 3500 doctors are currently exempted from paying fees under this provision, but they would be protected by a grandfather clause.

A family physician who sits on the CMPA council told *CMAJ* it may be in family physicians' best interest to support a flat fee. "As a family physician I need access to obstetricians and to orthopedic surgeons — I need access to high-quality care," he said, warning that high CMPA fees can make it much harder to find these specialists. "I work on a team. If I can't find an orthopedic surgeon or other members of the team, we're going back to the way medicine was practised 50 years ago. Medical associations, governments — everyone has to work together on this."

Dubin stressed that if the CMPA moves to the uniform-fee structure, federal and provincial governments will have to ensure that a uniform-fee regulation governs all companies providing indemnity coverage to Canadian physicians. Otherwise, some companies might try to provide cheaper coverage for low-risk specialties without covering specialists at high risk.

The CMA's initial response to Dubin's report is positive. The association and its divisions presented a brief to Dubin last August that emphasized the need for the CMPA to explain publicly its large cash reserves and the size of its fee increases.

The size of those reserves, which stand around $1.1 billion, have been attacked by some governments, which say they should not have to subsidize physicians' fees paid to such a wealthy organization. In Ontario, former health minister Jim Wilson cut back unilaterally on the province's reimbursement of the fees. The move, which was later rescinded, caused concern across the country, where CMPA rebates total more than $95 million annually.

Dubin challenged Wilson's conclusion and said the CMPA was merely being prudent in maintaining large reserves. "The reserves do not currently exceed the actuarial liabilities and they should not be permitted to be depleted by successive years of setting fees at less than the actuarially indicated rates," said Dubin.

Thomas agrees. "There are still 267 unsettled cases involving babies," he said. Potential settlements totalling $3–$4 million each — one case was just settled for $3 million — show how quickly awards could accumulate, he warned.

"The CMPA reserves provide important protection for Canadian patients," added Dr. Judith Kazimirski, the CMA president. "We are pleased that Justice Dubin has recognized that the reserves are important and not surplus to the CMPA's needs."

Dubin also noted that:

- Sixty breast-implant cases are pending, requiring substantial legal fees.
- Ontario alone has 27 open cases relating to HIV-related claims against physicians.
- There is a potential class-action suit involving 18 000 claimants who allege that they were infected with hepatitis B because of improper medical procedures.

John Laplume, executive director of the Manitoba Medical Association and chair of the CMA/Divisional Working Group on the CMPA, said he was optimistic after reading the 152-page report, which contains 55 recommendations. "I do think that all stakeholders have to be very careful about cherry picking because the recommendations have to be looked at as a total package. Governments may wish to ignore some of the recommendations, and where would it end?" He described some of the suggestions, particularly the ones concerning accessibility and accountability, as a "breath of fresh air."

Dubin recommended that the CMPA council be made more accountable to the general membership through the introduction of a write-in ballot for the election of council members. (Council members are currently elected by those attending the CMPA's annual meeting.) He also called for better communication within the CMPA and for a greater effort to inform members of the association's work. He also proposed the appointment of 2 lay members to the CMPA council, although they would not participate in determining which claims should be defended. Thomas said that recommendation will be considered, although "it might be difficult for lay

members to be comfortable in that milieu, because it is very technical."

One of the CMA's major concerns was the need for collaborative risk-management projects, and Dubin delivered. Not only is there "insufficient awareness of existing teaching programs and the resources available to develop new ones," he said, but the CMPA must "continue to work with other organizations to develop educational programs suitable for the areas of practice they represent."

However, he said the CMPA should not assume responsibility for developing clinical practice guidelines or setting professional standards. "This would be inappropriate because it would conflict with the CMPA's role in defending physicians against allegations that they have failed to meet the standards of the profession."

The CMA also called on provincial and territorial governments to protect rebate programs for all physicians, a stand Dubin supports. "I urge the federal and provincial governments to continue to assist doctors with the cost of professional indemnity coverage until a compensation arrangement is reached that accommodates this cost."

Dr. Cheri Bethune, president of the College of Family Physicians of Canada, said her college "supports the overall thrust of this report, and we support the CMPA."

She said the uniform-fee proposal would help "level the playing field" by putting an end to fees that discourage involvement in high-risk specialties. This would benefit every family physician, she added, because they rely on specialist support. However, she said ongoing government subsidization of CMPA fees will be critical. "It is essential that this support continue."

Thomas said the CMPA council was to meet in February to discuss the report's recommendations. Copies of the report are being mailed to every member.