



CMPA “amazed” as number of new legal actions against MDs declines in '98

Patrick Sullivan

First, the good news. Most physicians' malpractice fees are going to drop slightly next year, and fewer civil lawsuits against doctors were launched last year.

The bad news? Well, there wasn't much as the Canadian Medical Protective Association (CMPA) held its annual meeting Aug. 25. Even though legal fees and award settlements cost more than \$2500 for each of the 58 000 members in 1998, that still marked a 13% drop from the peak year of 1996, when legal expenses alone totalled more than \$101 million. By last year, legal bills had declined to \$83 million. Legal costs rose by 25% a year between 1993 and 1995.

However, it was the 4% decline in the number of new legal actions commenced — it dropped to 1339 cases — that impressed Dr. Lawrence Groves, a member of the CMPA's Legal Services Committee. He described the modest downward trend as “amazing” because of changes within the health care system and extra pressure on physicians faced with diminishing health care resources. “One would expect the number of cases to increase,” he said.

Groves also noted that while being named in a legal action — 2539 doctors had that experience in 1998 — is never pleasant, Canadian physicians are far luckier than their US counterparts. The risk of a Canadian doctor being named stood at 1 in 23 in 1998. Even though that is a marked deterioration from 1 in 53 doctors in 1980, Groves said it is much better than the 1-in-5 risk faced by physicians in Texas. “Canadian doctors spend a lot less time in the courtroom,” he said.

The CMPA reported that its lawyers won 80% of cases that proceeded to trial in 1997 and 1998, compared with 62% in 1995 and 72% in 1996. It said it is striving to contain legal costs and the costs of settlements by pursuing tort reform. For example, it wants courts to encourage the use of structured settlements. Citing as an example the conventional, lump-sum payment of \$4.2 million given to a 5-year-old child with severe, irreversible neurological compromise and remaining life expectancy of 55 years, the CMPA said the payment would be reduced to less than \$2.3 million with a structured settlement. In both cases, the plaintiff would get the same benefits.

Dr. Michael Lawrence, who chairs the CMPA's Tort Reform Working Group, said reform is needed because of rising fees. He said patients are already complaining because it is becoming harder to find specialists in high-risk areas such as obstetrics.

Shrinking spending = more legal risk?

For the first time, the CMPA annual report warns that shrinking health care resources may be placing doctors at greater medicolegal risk. It points out that doctors routinely face dilemmas imposed by administrative and financial constraints. Despite the constraints, “the courts appear unwilling to accept an ‘economic defence’ to justify withholding treatment or services from a patient for reasons of overall cost-containment. In other words, courts have criticized physicians who have made a conscious choice, for reasons of cost-containment, not to make use of resources that were available.”

The association says the “the question remains how the scarcity of resources will affect the standard of care expected of health care professionals.”

Freedom of choice

The only controversy at the meeting surrounded a motion from a splinter group of Ontario doctors to allow CMPA members to choose their own lawyers in cases involving disputes with provincial colleges or hospital boards, or in cases involving billing disputes. Currently, the CMPA assigns legal help from a set list of roughly 340 lawyers practising at legal firms across the country.

Dr. Patrick Hewlett of the Toronto-based Ontario Physicians Alliance presented a petition signed by 796 doctors supporting “freedom of choice,” but his related motion lost by a landslide.

Although 3 speakers brought complaints about the legal service they had received to the meeting floor, CMPA General Council Margaret Ross said only a handful of complaints are received annually and these members are routinely offered new lawyers.

Dr. Bill Thomas, a past CMA president who now serves as CMPA president, said it is in members' best interests to use a set list of legal firms because this helps contain costs. “Under the current system we have some direction and control over lawyers' actions.”

Although no count was taken during the show-of-hands vote on Hewlett's recommendation, it appeared to lose by a count of about 140 to 5.

Patrick Sullivan is News and Features Editor at CMAJ.