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Editorial: The hospital canker

Lawmakers need to protect physician whistleblowers

Monday, November 03, 2003

For many years, a fundamental principle for physicians has been popularly understood as: "First, do no harm." These words are not in the ancient Hippocratic Oath, but they have been handed down as a rough but sensible synopsis.

As it happens, fealty to the original wording is pointless, because across the nation some hospitals have reworked this noble idea. Too often for physicians who see harm being done, the operating principle is today: "First, make no waves."

A sea of misery engulfs doctors who dare to make waves in the name of medical ethics. What is more, this scandalous situation has barely registered with most Americans, the very ones who stand in jeopardy.

That is why last week's report by Post-Gazette Staff Writer Steve Twedt came with the force of a shocking thunderclap.

His four-part series, "**The Cost of Courage**," was the result of a 10-month investigation. In case after case, he found doctors being punished for warning hospital authorities about unsafe conditions or poor performance by other doctors. Whistleblowers too often find the whistle blown on them.

And what is the cost of their courage? As Mr. Twedt discovered, the cost can be counted in ruined careers. Physicians seen as troublemakers can find themselves listed on the National Practitioner Data Bank, which is supposed to be a resource for hospitals to help ensure that bad doctors don't move from one place to another.

Instead, it has also served as a career-ending blacklist for good doctors whose main offense was to speak out about bad situations. As the series reported, those targeted as troublemakers were not just marginal physicians. The ranks of the persecuted include "the best of the best: chiefs of staff, board-certified specialists, highly regarded transplant

surgeons and the president of the Pennsylvania Medical Society."

The bureaucratic self-defense reflex of hospital authorities is as strong as it is alarming.

In one case, a doctor working for a veterans hospital noticed that one nurse was present when 45 of 55 patients died, a huge statistical incongruity. But the nurse was not the focus of official concern. Instead, the doctor and chief of staff who supported him found themselves in disfavor for having the temerity to warn about a possible serial murderer (the nurse was later arrested but the homicide charges were dropped because proper testing wasn't done at the time).

As the series noted, even when state or federal investigations subsequently prove the whistleblowers right, the damage to their careers has been done. The law is heavily stacked in favor of hospitals, and once a doctor's name appears in the data bank only the hospital can remove it.

How can such injustices occur? Although many fine hospitals are untouched, it seems that in some institutions the corrupt values that have blighted corporate America have leaked into the business of medicine. A narrow self-interest rules. America has come a long way from the days when doctors effectively ran hospitals and HMO was not a term known in the language.

The debate about caps on malpractice damages also looms over what is happening, but not as an opportunity for trial lawyers to make their familiar point that the persistence of medical errors is the real problem. Actually, the moral is the reverse: Many hospitals are clearly terrified of lawsuits and perceive doctors who speak out as giving aid and comfort to litigants.

This is wrong as a matter of morality, wrong as a matter of social policy. Still, as quietly as the issue has festered, state Rep. Kerry Benninghoff, a Republican from Centre County, has introduced a bill that envisages an independent statewide review panel to judge doctors whose competency or behavior has been questioned. Another lawmaker, Rep. Camille "Bud" George, a Democrat from Clearfield County, is proposing to expand the state's whistleblower law to offer more protection to health-care workers. Both efforts deserve support.

But the real remedy must come from Congress. After all, this is a national problem. While only a small minority of hospitals may be affected, the relatively few injustices are gross enough to be subversive of the overall efficiency of the health-care system.

The first order of business should be to revisit the Health Care Quality Improvement Act of 1986. Passed with the best intentions, it gave too much discretion and protection to hospital-based review panels which have too often demonstrated a tendency to shoot the physician-

messenger of bad tidings. Anyone who doubts this should reread the exhaustive documentation of cases cited in the "Cost of Courage."

Ordinary people who enter the hospital certainly expect that their doctors will do them no harm. But, with simple trust, they also expect that their doctors will intervene if they are not getting the best care in the system.

That is the disgrace at the heart of the Post-Gazette series. The trust of patients is being abused. The weight of the law and hospital administration are all against doctors who speak out in good conscience. It's time for Congress to make its own waves to set this right.

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