

What can be done to Unsustainable Malpractice Payouts?

By A/Prof Goh Lee Gan

Two countries' experience and thoughts on controlling unsustainable malpractice payouts have been collated from current write-ups on the Internet.

THE AMERICAN EXPERIENCE

- ***It is time to curb the quantum of awards.***
- ***California shows the way. American Medical Association is leading the campaign.***
- ***Peggy Peck, a free-lance writer reports in MedWeb on 26 June 2002.***

"Rising medical malpractice costs and fewer insurance companies willing to offer malpractice coverage" have created a crisis in the availability of high-risk care. The AMA contends that "multimillion-dollar awards handed out by juries drive up the premiums. Those spiraling awards drive insurers out of the malpractice insurance market, and the remaining insurers jack up rates to try to cover future awards."

"Caught in the middle are the nation's doctors and hospitals that often can no longer afford the insurance bill... Many physicians caught in a similar squeeze are fleeing states with high malpractice insurance rates and setting up practice in states that have reformed their legal systems... California is a good example of a state where reforms have worked."

"The Medical Injury Compensation Reform Act, called MICRA (pronounced "mike-ra"), limits the amounts that juries can award for pain and suffering to a maximum of US\$250,000 and also limits the contingency fees paid to attorneys, and it requires that multimillion-dollar awards be paid out over several years rather than in a lump sum."

This limitation has a positive effect. A gastroenterologist pays US\$7,700 a year for malpractice insurance in California. But in Miami, he will need to pay up to US\$40,000. Similarly, an obstetrician in California pays an average of US\$60,588 for malpractice insurance, while a physician delivering babies in Miami has to pay more than US\$200,000.

"The situation is so bad that it has reached the critical stage in a dozen states – Florida, Georgia, Mississippi, Nevada, New Jersey, New York, Ohio, Oregon, Pennsylvania, Texas, Washington, and West Virginia – and thirty other states are reaching the breaking point."

"The AMA has declared malpractice reform its No. 1 legislative priority. It wants a federal law similar to MICRA to be passed within a year. To bring pressure inside the beltway, the AMA is asking for help from trade groups, unions, employers, farmers, patient advocacy groups – in short, any one who is willing to join their ranks."

"The AMA's reform campaign will cost US\$15 million this year," and it is "passing the hat to pay for it." At the AMA's annual meeting in Chicago, every one of the more than 550 delegates was asked for a US\$1,000 donation "to fund our war chest," and the President of AMA, Dr Richard Corlin kicked off the campaign with his own check for US\$1,000. "Within minutes, more than twenty checks were deposited in the campaign donation box."

THE AUSTRALIAN EXPERIENCE

Intention:

- ***To cap damages.***
- ***To hold lawyers personally liable.***
- ***To institute principle-driven reform.***

The Sydney Morning Herald in a report on 4 May 2002 analysed the Australian experience and the underlying causes of UMP's crisis as "a combination of rising damages awards against doctors and UMP's own improvidence in the face of that rising tide of claims."

"The core problem", observes the Sydney Morning Herald, is "the unsustainable escalation of damages awards". It adds that "it is the legal system generally and judges in particular that, not for the first time, have been found at fault."

The Premier of New South Wales, Mr Bob Carr announced "a bundle of changes to NSW law – to require doctors and others defending personal injury claims to show only that they took reasonable care; to hold lawyers personally liable for court costs if they instigate "unmeritorious" public liability insurance claims; to cap damages; to limit access to courts. Even with such changes, though, the scope for excessive judicial generosity will still be wide."

"The Chief Justice of NSW, James Spigelman, in a recent speech offering a model for "principle-driven reform", enumerated almost a dozen ways judges might moderate the scale of their damages awards. It is with judges that the problem begins. And it is with them that the solution – short of far more radical reform – ultimately lies." ■

References:

1. *Peggy Peck. AMA declares war on medical malpractice crisis. 26 June 2002. Lycos WebMD.*
2. *Anonymous. Medical indemnity: the way ahead. 4 May 2002. Sydney Morning Herald.*