

## Medical Quality Through Public Accountability

While doctors clamor for tort reform--limiting a patient's right to sue if a medical procedure goes awry--consumers find they have very little protection from bad doctors. Texas doctors can and will continue to practice even after their mistakes or negligence have seriously harmed people.

**D**octors say they can't get liability insurance any more because Texas consumers sue too often and collect too much. Indeed, costs for insurance have risen dramatically and many companies providing this coverage have left the state--but the facts show that lawsuits are not the problem.

Medical liability insurance will only become affordable and accessible with significant insurance market reform and medical quality protections that will keep bad doctors from harming patients in the first place. In fact, as long as there is lax regulation of doctors and hospitals, the courthouse is the only place consumers can turn for help when injured. Protection of the general public should be the first and foremost concern in this debate.

### MEDICAL QUALITY REFORM

Real reform starts by improving the quality of care provided by doctors and hospitals. While progress is being made in this area, the most important step toward helping consumers avoid poor quality care is to give them information about complaints and disciplinary actions against doctors and hospitals.

### In Short

Real reform starts by improving the quality of care provided by doctors and hospitals and reducing medical errors and negligence. Today, consumers need more information about complaints and disciplinary actions, and the TSBME must act aggressively to remove bad

Like medical malpractice liability issues, attention to the regulation of doctors and hospitals is cyclical. For example, the Texas State Board of Medical Examiners (TSBME) is typically ignored for years until a scandal draws attention to it, leading to outraged policymakers and a shocked public. In response, they receive more funds to do a better job (often justified) and sometimes get a new director who pledges to improve enforcement and who typically generates some activity. But two things always remain the same and perpetuate the cycle:

**Secrecy:** Information about a bad doctor only gets to the public at the very end stage, which can take years. The public has no ability to be a watchdog for the agency by analyzing how they respond to complaints.

**Fundamental structure and philosophy:** The majority of the members on the TSBME are the very professionals they regulate -- a prime opportunity for conflicts of interest and self-protection.

The TSBME should be more accountable to the public than to the health care professionals they license. In today's world of managed care, it is particularly important for consumers to have easy access to information about doctor quality of service. They may need to change doctors when changing jobs and moving into different health plan networks. The agency holds this information -- some is public, but most is confidential by current law.



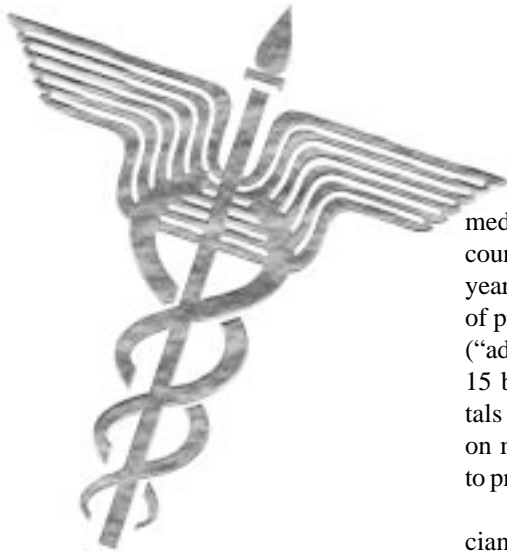
### HOSPITAL AND PHYSICIAN COMPLAINT INFORMATION

Consumers serve as the eyes and ears of licensing boards through their complaints. Often complaints are labeled "invalid" because the specific issue they raise does not violate an existing law. However, in Consumers Union studies of consumer complaints -- from optometrists to manufactured homes -- we find they often identify issues that should be addressed by law or that clearly indicate a problem. We find very few "frivolous" problems. Consumer complaints are important pieces of the quality of care puzzle.

Complaints against doctors and hospitals are not public and thus there is no way to determine if consumers are identifying serious problems with doctors that should be addressed by the Legislature. Over 3400 complaints received by the TSBME in 2002 (67 percent) were found to be "invalid." The only way to effectively assess the board's responsiveness is to review the consumer feedback it receives.

Complaint information can be made available without compromising the medical privacy of the patient by removing all the patient's identifying information.

Some argue against making doctor complaints public by saying it



would violate the constitution's protection that we are all "innocent until proven guilty." However, a doctor's license is not a "right" but a granted privilege to practice medicine. Some complaints take years to resolve—in the meantime, anyone seeking information about a doctor under investigation is told nothing—even if the complaint is serious enough to ultimately result in the revocation of a license.

Others say only the number of complaints should be reported. Reporting a number would be unfair to doctors as well as consumers—it equalizes the most egregious complaints with the most benign. The nature of complaints against a doctor is more significant than the aggregate number.

**Hospitals:** Consumers know very little about hospitals beyond what the hospitals say in marketing materials. Although much information exists, most is held in secret. Infection rates, medical errors, nurse staffing ratios, and patient satisfaction surveys are now typically run through hospital peer review committees—a tactic to keep important information from the public. Consumer complaints filed against hospitals used to be public. They were made confidential by an amendment to a 1999 bill. In 2001, the sponsor of the amendment added provisions in two separate bills to reinstate consumer access to complaint information. The Governor vetoed both bills.

According to the Institute of Medicine at least 44,000 and as many as 98,000 Americans die each year as a result of

medical errors. Medication errors account for an estimated 7,000 deaths each year. The total national health care costs of preventable errors resulting in injury ("adverse events") is estimated to be \$8-15 billion. Most patients enter hospitals having no knowledge of its record on medical errors, including its efforts to prevent similar problems in the future.

In a recent survey, 35% of physicians and 42% of consumers said they experienced an error in their care or the care of a family member. Physicians and consumers cited understaffing of nurses - 53% and 65% respectively - and overworked, stressed or fatigued health care professionals—50% and 70%—as common causes of medical errors. Physicians called for improved nurse staffing levels and consumers called for reports on medical errors to be made public.

In a survey of nearly 21,000 readers, Consumer Reports found a great variance in the quality of care patients receive, much of which is attributed to whether a facility has an adequate nursing staff and a well-organized care system.

### DISCIPLINARY ORDERS

The TSBME rarely takes formal action. When they do, the orders and the facts behind them are public. The TSBME should provide, in a consumer friendly and easy to access format, more details about action taken. Often disciplined doctors continue to practice with restrictions on their license, but consumers cannot easily find out that their doctor may no longer write prescriptions. All licensing information, disciplinary orders, and the details behind those orders should be available on the agency's web page in a searchable format. Board orders challenged by doctors and overturned by a court should also be posted.

### MALPRACTICE INFORMATION

Medical malpractice lawsuit documents are public at 254 courthouses, but there is no central place where consumers can get this

information. While the number of doctors in a specific specialty and location who were sued and the collective outcomes are available, the public cannot find out if a particular doctor has been repeatedly sued for the same problem. This information, currently collected by the TSBME, should be included in the physician profiles and posted on the agency's web page.

The TSBME receives notice of claim letters from insurers and information about settlements and court decisions. But the Board cannot require or ensure that all medical malpractice carriers report—many are not regulated by the state.

Most doctors are providing good care and good services. But some doctors are sued repeatedly for similar problems each time. This is important information to the public and they should have access to it.

### RECOMMENDATIONS

- Make complaint information on hospitals and physicians public.
- Collect information about hospital errors, infection rates and nurse staffing ratios and make it available to the public.
- Make information already public—details about physician and hospital licensing and disciplinary orders—available in a consumer-friendly and easy-to-access format.
- Make medical malpractice information about individual doctors available to the public at a central location.
- Make a majority of TSBME members public rather than physician representatives. Advisory committees of physicians should be used to assist in reviewing clinical information relevant to discipline.

