



Texas pledges an end to “lawsuit abuse”

Milan Korcok

When Knapp Medical Center, the principal hospital serving Canadian snowbirds who winter in the Rio Grande Valley in Texas, was hit with a \$10-million lawsuit involving a woman who died following knee surgery, only the local papers paid much attention. With juries down here routinely ordering multimillion dollar awards — one family of couch potatoes that was overcharged for satellite TV services was awarded more than \$500 million — a \$10-million judgement sounded like peanuts.

But had the hospital and the family not settled (for \$2 million, the limit of the hospital’s insurance), the 200-bed hospital might have closed, throwing 700 people out of work and depriving the town of Weslaco of a \$15-million annual payroll. What that would have done for the health care of thousands of Canadian “winter Texans” as well as the local residents is anyone’s guess.

In Texas, as in many other states, rampant lawsuits have created a culture where no demand seems inconceivable and no one — not even the innocent — is spared. Consider the \$12-million award against a Houston pulmonologist who had been called in to help 2 patients experiencing septic shock following liposuction performed by another doctor. The pulmonologist was insured and the other doctor was not. So even though the jury found the pulmonologist only 25% responsible for 1 patient’s death and the other’s comatose state, he was assessed the full \$12-million penalty, which was \$11 million more than his insurance coverage.

But the times they are a changin’, even in Texas. Thanks to robust civic action by groups such as Citizens Against Lawsuit Abuse, what was once a “medicolegal hell” (see *CMAJ* 1995;153:963-6) has in just 5 years been transformed into the vanguard of a national tort-reform movement. The 1994 election marked the watershed: conservative judges did well at the polls — judges are elected in Texas — while conservative pro-business legislators swept the state house and Republican George Bush, a proponent of tort reform, was elected governor.

The pursuit of suits

A year later, the Texas legislature passed massive reforms affecting the pursuit of lawsuits. Caps were placed on punitive damages and more direct apportioning of responsibility in malpractice actions was applied. Before this latter reform, a physician found guilty for as little as 11% of a patient’s injuries could be forced to pay 100% of the damages. Now a defendant must be at least 51% responsible

before he can be charged for all of the damages. As well, plaintiffs’ lawyers now have to post cash bonds or file expert reports to validate their cases, and the rules for qualifying as an expert witness have been tightened.

Orthopedic surgeon John Icton, formerly of Barrie, Ont., says that after he lost a \$1-million malpractice action in 1995 — it was his first suit in 18 years of practice — he learned that the more one is insured for, the greater the

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claim will be. In fact, plaintiffs’ lawyers have the legal right to find out the limits of a physician’s insurance, and that amount often establishes the ground rules. After his suit, Icton, who lives and works in Port Arthur, Texas, cut his insurance coverage by about half. He thinks this has made him a smaller medicolegal target. With the reforms, he says, “it’s tougher to sue me than it used to be.”

Data from the Texas State Board of Medical Examiners show a dramatic drop of almost 40% in malpractice claims between 1995 and 1997, from about 5400 cases to just more than 3000. There was a resurgence in 1998 but that is being attributed to new laws that allow patients to sue managed care organizations such as HMOs.

The reforms also had a salutary effect on medical malpractice premiums. The 1995 legislation mandated premium rollbacks for each of the next 5 years to coincide with the anticipated savings from the reforms. Those rollbacks have amounted to between 10% and 20% annually and totalled more than \$100 million so far in premium savings alone.

As for the courtroom culture, it changed dramatically. Before 1985, almost 70% of tort cases were decided in favour of plaintiffs. Since 1995, 76% have been decided in favour of manufacturers, doctors, hospitals and other defendants. Such results are catching the attention of other states. Since 1995, more than half of all states have passed laws designed to curb what they consider lawsuit abuse. Experts are betting more will follow.

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