Correspondence —
continued from page 2

of the physician). I am sure that a response from Mr. Furrow would be most interesting and thoughtful.

Donald L. Feinsilver, M.D.
Assistant Professor of Psychiatry
The Medical College of Wisconsin
Milwaukee, Wisconsin

Professor Furrow responds:

Dr. Feinsilver sounds a major theme, and a minor one, in response to my discussion of medical malpractice litigation. His major theme is that any discussion by a lawyer of the impact of malpractice litigation on medical practice is suspect. A "second agenda" exists, he complains, in which the lawyer's economic interest leads to bias. Malpractice litigation generates fees for lawyers, and doctrinal and other legal changes which expand the liability of physicians and providers increase lawyers' income. I am a lawyer, and therefore, says Feinsilver, my biases are painfully evident. Unfortunately for Feinsilver, I am an academic lawyer; I have never engaged in malpractice litigation, and have no vested interest in income related to such litigation. Rather, I have the academic's interest in evaluating malpractice litigation as only one possible approach among many for improving medical practice, as a form of "microregulation," as my article characterizes it. Feinsilver, however, cites "evidence" to support his theme: I define "medical practice," he says, by reference to the fact that most "incidents that lead to malpractice claims occur in hospitals." This misses the point: I do not define medical practice, but instead point out the centrality of the hospital setting (as do the two studies I review) in causing iatrogenesis and of the need to study hospital practice and incentives which affect physicians and others within that setting.

The major theme has a thin timbre, being essentially an *ad hominem* argument that, by attacking my objectivity, seeks to undermine my conclusions. Surely a substantive response is possible. Is malpractice litigation counterproductive, producing costs in defensive medicine that outweigh any incentive effects produced? Has evidence been produced by systematic study as to a positive correlation between overall improvements in medical practice, and reductions in medical error, traceable to the effect of legal rules and the threat of lawsuits? No frontal attack is made on either my facts or my conclusions. The point of the two *New England Journal of Medicine* studies of iatrogenesis in hospitals was that the problem is substantial, larger than commonly perceived, and little is being done. The relation of the legal system to these problems is suggested in a perjorative fashion, without the evidence of systematic study that is apparent in tracing iatrogenesis. Dr. Feinsilver falls into the same error as the authors of the studies do, for reasons relating to a misunderstanding of the contours and limits of litigation.

The minor theme sounded by Feinsilver (and it is almost inaudible) is that the tort system's role is to protect patients' rights (however defined) but not to improve the quality of medical care through the reduction of medical error. The underlying assumption is apparently that medical error, whether avoidable or not, cannot be appropriately evaluated through litigation. An argument can be made for this position,[1] but Feinsilver does not make it. The need for a systematic mechanism for deterring medical practices leading to iatrogenic results is a real one, and it would seem that physicians have not succeeded through self-governance in reducing those errors, even though, as Feinsilver concludes, such "is the primary interest of the physician."

References

1. *See, e.g.*, Gorowitz and MacIntyre, *Toward a Theory of Medical Fallibility*, JOURNAL OF MEDICINE & PHILOSOPHY 1:51 (1976).

The Editors reply:

Donald L. Feinsilver's comments on Iatrogenesis and Medical Error: The Case for Medical Malpractice Litigation *by Barry R. Furrow, J.D., include the statement: "The editor, too, should be aware that when an article is accepted for publication and appears in print in a scientific journal, an aura of expertise is vested upon the author." This statement requires our reply.*

Professor Furrow's piece arises from his own particular expertise, training, and knowledge, just as all articles reflect their authors' points of view. His article, again like all articles that appear in LAW, MEDICINE & HEALTH CARE, *is intended not only to act as a catalyst for meaningful dialogue and discussion, but also as authority for the propositions stated. Any article that is published in* LAW, MEDICINE & HEALTH CARE *is not intended to be the absolute or final word on a subject, but only as authority as described by the particular author. Each article that is published by* LAW, MEDICINE & HEALTH CARE *must, by necessity, leave room for debate and differing viewpoints. Such appears to have been the case given Dr. Feinsilver's comments. Concomitantly, Dr. Feinsilver, too, must recognize that his views can only be authoritative in the context in which they are stated. Simply put, Dr. Feinsilver disagrees with Professor Furrow. But the inference that no aura of expertise surrounds Professor Furrow because of this should not, nor can it be, taken at face value.*

Miles J. Zaremski, J.D.
Editor-in-Chief

Team Talk: Ways of Arriving at Decisions

Dear Editors:

To the many points made in Edmund Erde's article, *Notions of Teams and Team Talk in Health Care: Implications for Responsibility* (published in October 1981), it is useful to add the dimension of the decision-making process.

Essentially, teams have three potential ways of arriving at decisions: by-authority, by-majority vote, and by-consensus. For clinical teams, the by-majority vote option has little appeal because in clinical situations the primary concern is carrying out the decisions, not just reaching decisions. Thus, by-majority vote has appeal for governance situations in hospitals where the focus is on "What will we decide?" The by-authority approach has considerable appeal for acute clinical situations, and the by-consensus

https://doi.org/10.1111/j.1748-720X.1982.tb01699.x Published online by Cambridge University Press

approach has considerable appeal for chronic clinical situations. Theoretically, the by-consensus approach may seem impractical and may seem to impinge on the autonomy of the various disciplines. However, in actual practice, consensus is often easier to reach, and each discipline usually has considerable autonomy in carrying out its tasks. In thinking about legal and ethical responsibilities, there are obvious differences in these responsibilities, depending upon the way in which the team arrives at its key decisions.

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Nursing: Unions and Reimbursement

Dear Editors:

I am writing this in response to Karen O'Rourke's letter, published in the October 1981 issue, which states that nurses need to grow up and join a trade union. To do this is a giant step backwards. It is fairly obvious to everyone that nurses everywhere are very dissatisfied with being on payrolls of hospitals. The movement away from hospital payrolls to various health personnel employment agencies is widely evident. This is a positive step and a constructive solution but more must be achieved. Nurses need direct reimbursement for actual services provided. This is just becoming a reality, and nurses are now beginning to receive third party reimbursement. This method of payment is not without its faults, but so long as health care does not become "nationalized," nursing could be a lucrative profession.

Similar to Ms. O'Rourke, I also have concerns about conflicts of interest within the ANA, but to urge nurses to join trade unions such as the AFL-CIO is urging them to take giant leaps backward.

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College of Allied Health Sciences
Thomas Jefferson University
Philadelphia, Pennsylvania

Other Organizations

Medical-Legal Seminar, in Aspen, Colorado (March 15-19, 1982). Contact: Cyril H. Wecht, M.D., J.D., Pittsburgh Institute of Legal Medicine, 1519 Frick Building, Pittsburgh, PA 15219.

Forensic Toxicology, in San Antonio, Texas (March 22-26, 1982). Contact: Medical School Continuing Education, University of Texas Health Science Center, 7703 Floyd Curl Dr., San Antonio, TX 78284.

Nurse Recruitment—Strategies for Success, in San Antonio, Texas (March 29-31, 1982). Contact: Aspen Systems, 1600 Research Blvd., Rockville, MD 20850.

Research on New Therapies: New Challenges, Practical Problems, at Harvard School of Public Health, Cambridge, Massachusetts (March 30-31, 1982). Contact: Public Responsibility in Medicine and Research, 15 Court Square, #340, Boston, MA 02108.

National Council on the Aging Annual Meeting, in Washington, D.C. (March 31-April 4, 1982). Contact: NCG, 600 Maryland Avenue, S.W., Washington, D.C. 20024.

Managing Small Institutions, in Boston, Massachusetts (April 18-24, 1982). Contact: Executive Programs in Health Policy and Management, Harvard School of Public Health, 677 Huntington Ave., Boston, MA 02115.

Institutional Review Boards and Their Institutions, at University of Texas Health Science Center, Houston, Texas (April 22-23, 1982). Contact: Public Responsibility in Medicine and Research, 15 Court Square, #340, Boston, MA 02108.

American Society for Pharmacy Law, in Las Vegas, Nevada (April 24-29, 1982). Contact: American Society for Pharmacy Law, U.S. Pharmacopeial Convention, 12601 Twinbrook Parkway, Rockville, MD 20852.

ASLM Conferences

Impaired Health Care Professionals: A Challenge to the Professions, co-sponsored by, among others, the Michigan Hospital Association, the Michigan State Medical Society, and the Michigan Nurses Association, at the Detroit Plaza Hotel, in Detroit, Michigan (March 5, 1982).

Health Care Labor Law, at the Shamrock Hilton Hotel in Houston, Texas (March 15, 1982) and, in cooperation with the Hospital Association of New York State, at the Vista International in New York City, New York (April 30, 1982).

Human Life Symposium: An Interdisciplinary Approach to the Concept of Person, co-sponsored by the Institute for the Interprofessional Study of Health Law, at the Shamrock Hilton Hotel in Houston, Texas (March 11-13, 1982).

Legal and Ethical Aspects of Health Care for Children, co-sponsored by, among others, the Association of Pediatric Oncology Nurses, the California Association of Catholic Hospitals, the California Hospital Association, the California Medical Association, the California Perinatal Association, the California Society of Healthcare Attorneys, and the California Society for Nursing Service Administrators, at the Biltmore Hotel in Los Angeles, California (April 1-2, 1982).

Medical Determinations in Workers' Compensation, at the Franklin Plaza in Philadelphia, Pennsylvania (October 11-12, 1982) and in Seattle, Washington (November 1982).

Licensing and Credentialing of Health Care Providers, at the Capitol Hill Hyatt Regency in Washington, D.C. (October 4-5, 1982).

For more information or to register, please write or call: Conference Registrar, American Society of Law & Medicine, 765 Commonwealth Avenue, 16th floor, Boston, MA 02215—(617) 262-4990.

https://doi.org/10.1111/j.1748-720X.1982.tb01699.x Published online by Cambridge University Press