Testimony of

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Senate Judiciary Committee
The Medical Liability Crisis and Its Impact on Patient Care

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I am in my 4th year as a resident in General Surgery here at the University of Utah.

I chose a career in medicine as an undergraduate because of my interest in the sciences and a naïve desire to be involved in the healing process. I did not have a personal or family background in healthcare or law. At the time of this early decision, medical malpractice was little more than a bad commercial to me. Through four years of medical school and four years of Residency - this naïve view of malpractice issues could not have changed more dramatically.

Unfortunately, I believe, most medical students now consider the effects of malpractice in choosing a medical specialty. Students who are particularly adept at Surgery or Obstetrics are consciously deciding to pursue an alternative specialty solely because they want to avoid the perceived devastating effects of our countries malpractice crisis. Four years of undergraduate studies, followed by four years of medical school, and then by 3-7 years of residency is a significant commitment and students are unwilling to enter specialties where they perceive they will be thrown to the wolves.

A study published in 1998 out of the University of North Carolina showed that perceived malpractice premiums had a negative relation to medical students choosing a surgical specialty [1]. It is probably safe to say that since 1998 this influence has only grown as medical trainees continue to see no significant realized changes in this system.

The few of us that still hold to the naïve notion that we can practice in these threatened specialties have our eyes further opened when we enter residency. As Residents, we are protected from almost all of the business & insurance aspects of healthcare. We have minimal to no exposure with reimbursements, business decisions, and malpractice insurance. We do not act independently, and therefore we are protected from lawsuits while in residency. Even in the currently hostile environment of healthcare, our education continues to focus on the proper compassionate care of the patient.

Yet, despite this protective environment, we see and feel the overpowering influence that the current medical liability environment has on patient care and our individual practice decisions.

Two surgical residents from my small class of five ended their surgical training after one year. They both clearly stated their desire to enter an alternative non-surgical specialty. They did not want to work as hard as surgery demands during residency and beyond, only to find themselves caught in the middle of a broken system. I remember well conversations with these two residents where they questioned my sanity to stay in a specialty that works this hard only to have more risk. (No businessman or executive would choose to enter into an environment that guarantees higher risk for less pay). A survey conducted in 2003 of residents in their final year of training, residents who should be excited about the prospects of finally venturing off on their careers, showed that 1 in 4 would choose a different vocation altogether if they could start over, and that their predominate concern was related to malpractice. [4]

Residents, upon completion of their training, are choosing subspecialties and practice characteristics that will minimize the pitfalls of medical liability. The effects of the career choices being made now will only worsen the crisis as it relates to access to care. Under the current environment there will continue to be fewer medical students choosing "at risk" specialties and there will be fewer residents already in those specialties who will choose to include in their practice the procedures and patient populations that are higher risk. Adding, to the already described problem of more physicians in high risk fields retiring, dropping aspects of their practice including emergency and on-call services [2], and moving from communities where malpractice insurance is prohibitive.

Physicians have been charged with the care of the sick, whether friend or enemy. Historically, media portrayals such as MASH depicted the physician as a patient advocate, often at great personal or professional costs. It is under this environment that we are still trained today. Compassionate, quality patient care is our highest priority. Interestingly, in June of this year at a national American Medical Association (AMA) meeting a motion was proposed and debated - about whether medical treatment should be refused to malpractice lawyers [3]. This motion seems comical to me and it was widely shunned at the AMA meeting, but it does depict the nature of our current environment. Imagine the new medical student creed - We will care for our patients, friends, enemies, terrorists, but not malpractice lawyers. One interesting statistic compares the number of lawsuits from 1960 to today - "Before 1960, only one of every 7 physicians was sued during their careers. Current estimates indicate that 1 of 7 physicians is sued every year." [4]

From a medical student and resident perspective, this environment is very discouraging. My training emphasizes competent, compassionate care of each patient - every interaction of every day is about how I can better care for my patients, often at great personal sacrifice. This is all that I am exposed too as a resident. This is all that I want to do - that is to spend my professional life caring for patients.

Difficult problems rarely have simple solutions. However, the difficulty of the solution should not prohibit aggressive efforts at a multifaceted solution. It seems likely that tort reform, damage limitations, and insurance reform should all be addressed in a sincere balanced effort at healing a broken system. The far reaching benefits of more accessible and affordable healthcare cannot be overstated.

Fortunately, for the physician and patient, medicine can still be about patient care, but I fear that under the current medical liability environment this altruism will be more impossible with every passing medical school class.

References

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