PHYSICIANS, DEFENSIVE MEDICINE AND ETHICS

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ABSTRACT

Medical malpractice is most often defined as professional negligence by act or omission by a provider of health services that deviates from acceptable norms. Physicians are faced with an epidemic of medical malpractice law suits that has forced them to change the way that they do business. In order to protect themselves from litigation, physicians have begun practicing defensive medicine.

According to Spath (2009) defensive medicine is diagnostic or therapeutic interventions that are primarily used by the physician as protection against future medical malpractice law suits by the patient. Many of these medical unnecessary interventions are done in the physician's office and paid for even though they have limited if any real value. In fact there may be no real medical reason for the intervention other than fear of a lawsuit at a later date.

These additional procedures and return visits to the doctor have also become a large source of income to the physician practicing defensive medicine. They drive up health care costs, may cause needless harm to the patient and are usually unnecessary. This paper will attempt to explore whether or not the practice of defensive medicine is also an unethical physician behavior.

INTRODUCTION

The cost of delivering health care services in the United States continues to rise every year consuming an ever higher percent of our gross domestic product. One of the major reasons for this escalation in health care costs is the waste associated with the use of unnecessary medical tests, procedures and hospitalizations. Feldstein (2007) reports that there are two main causes of the escalation of medical care spending in this country. They are: high prices charged for medical services and the volume of unnecessary care delivered by doctors and hospitals.

A large portion of this unnecessary utilization of scarce health care resources is a direct result of the practice of defensive medicine practiced by physicians attempting to avoid medical malpractice. Malpractice awards do drive up insurance costs for doctors and there is strong evidence that doctors then engage in "defensive medicine" in an attempt to avoid even further increases in malpractice claims if they are judged to be negligent. Feldstein (2007) argues that the cost of defensive medicine is responsible for $30 million dollars in Medicare spending on an annual basis.

A survey of defensive medicine practices in Massachusetts in 2008 revealed that such practices cost a minimum of $1.4 billion in that state alone. Goodnough (2009) points out that in this study, 83 percent of the respondents reported practicing defensive medicine with an average of between 18 percent and 28 percent of tests, procedures, referrals and consultations occurring for protection from medical malpractice.
According to Searcey and Goldstein (2009) defensive medicine plays a much larger role in health care spending than medical malpractice law suits. By ordering additional tests and procedures the physician protects himself from lawsuits, provides the patient with a comprehensive examination and in most cases increases their own income.

According to Weinstein (2008) the current medical liability system has resulted in non intended results. One of these results is that the fear of lawsuits and the resulting practice of defensive medicine increases the physician's income and may place the patient at risk for injury or death from an unnecessary medical procedure. Weinstein (2008) also argues that diagnostic defensive medicine practices affect costs to a much greater extent than do therapeutic defensive practices with no increase in expected to benefit the patient. Therefore, the fear of lawsuits does lead providers to behave in a way that leads to increased health care costs that are for the most part a waste of scarce health care resources.

**MEDICAL MALPRACTICE**

The malpractice system in our country attempts to change the behavior of physicians. One behavior that has resulted from malpractice claims has been an increase in the practice of "defensive medicine" by physicians. This defensive medicine results in unnecessary medical expenditures which may also result in exposing patients to unnecessary danger from the tests. According to Feldstein (2007) physicians are able to shift the costs for these unnecessary procedures on to others including the patient or an insurance company. Feldstein (2007) also argues that if physicians are reimbursed on a fee for service basis they also benefit economically by prescribing additional testing for their patients. These tests, although desired by patients, usually provide very little if any benefit for the patient while protecting the physician from expensive law suits.

Sloan & Kasper (2008) argue that Tort Law should provide many functions including the provision of beneficial care, avoiding medical error and avoid wasteful care. It seems odd that fear of malpractice suits is actually causing the things that it was designed to prevent. By ordering more tests that increase the costs of health care, improves the provider's income by providing unnecessary care, and potentially providing the opportunity for increased medical errors that may result in harm or death to the patient.

**DEMAND FOR PHYSICIAN SERVICES**

The demand for physician services is what economists call a derived demand. The demand is derived from your demand for good health. Despite doctors complaining about their loss of power to managed health care our medical care delivery system is still largely driven by physicians who still have the continuing incentive for over-use of scarce health care resources.

A PriceWaterhouseCoopers study conducted in 2006 found that physician services accounted for the largest share of healthcare spending (24 percent). A large portion of this physician cost is related to defensive medicine which imposes unnecessary medical costs and medical risks while producing very little value for the patient. Kessler & McCellan (1996) point out that fear of legal liability may act as the incentive for physicians to administer costly precautionary treatments that offer minimal medical benefit. The physician also increases his or her income through the use of
this defensive medicine. These additional tests of little value may also produce greater risks for patients.

The Institute of Medicine (1999) reports that as many as 98,000 patients die each year from preventable medical errors. In many instances physicians and hospitals are actually reimbursed for having the error and then reimbursed again for rectifying the error if the patient lived. These errors included diagnostic and treatment errors, surgical errors, drug errors, hospital acquired infections and delay in treatment to name a few. The number of medical errors can only increase with more testing and hospitalizations that result from defensive medicine.

THE ETHICAL IMPLICATIONS OF DEFENSIVE MEDICINE

The practice of defensive medicine in order to protect the physician from lawsuits also benefits the physician in terms of increasing the physician's income. Many medical tests and procedures have been interpreted as defensive medicine that is a response to the threat of law suits. Chen (2007) argues that these additional tests are also a result of the corruption of medical decision making to earn additional income. These practices then are not the result of an attempt to benefit the patient but are ordered primarily to protect the physician from malpractice suits and also to increase the physician's income.

According to Dyck (2010) management ethics is nothing more than an evaluation of moral standards and how these standards influence the managers action. The physician acts as the manager of a patient's health when he or she makes decisions concerning tests or procedures to improve the health of the patient.

According to Boatright (2007) in order to determine whether an act is right or wrong we need to utilize ethical theories that are capable of enabling us to think through ethical business issues. The use of the ethical theory of utilitarianism has special significance when dealing with business decisions in making choices that offer the greatest overall benefits. The best approach to evaluate the use of defensive medicine by physicians would utilize the mainstream moral point of view. This point of view draws heavily on consequentialist theory which relies heavily on the consequences of the action in determining what is ethical. This theory suggests that actions resulting in beneficial outcomes for the individual are deemed ethical. The most used consequentialist theory is utilitarianism espoused by Jeremy Bentham and John Stuart Mill. They believed that utilitarianism requires ethical managers to produce the greatest good for the greatest numbers of people. The manager ought to act to produce the best consequences possible for the largest number of people. This is hardly the case with a physician practicing defensive medicine.

The costs of medical malpractice include the insurance costs and the costs associated with defensive medicine. Santere & Neun (2010) points out that physicians believe that they are encouraged by the threat of malpractice to over utilize medical services. These physicians also benefit financially by ordering these additional tests and procedures to protect themselves from law suits. The other side effect of ordering additional medical care is the very real possibility of hurting the patient through medical errors resulting from the additional care. This possibility of hurting their patients while protecting themselves and increasing their own income is clearly a violation of medical ethics thus making defensive medicine an unethical practice.
DISCUSSION

It has become very clear that medical malpractice liability law is not achieving its objectives of compensating patients who have been injured by negligence and stopping providers from practicing negligently. It is also evident that the fear of medical lawsuits have clearly changed physician practice patterns resulting in more testing and procedures that usually provide limited value while dramatically increasing the cost of health care delivery in this country.

Providers of health services are paid for the services they offer rather than for the outcome they produce. The practice of defensive medicine increases the number of services offered by providers usually offering very little improvement in health outcomes while providing some protection from malpractice for the providers that order the tests. This additional testing increases the physician's income but may also place his or her patient at additional risk for medical errors.

Defensive medicine offers the majority of patients very little value while possibly exposing these patients to additional medical risk. This fact will usually make defensive medicine an unethical practice.

REFERENCES


