

Perinatal/Neonatal Medico-Legal Forum: Valpractice

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The monograph below was originally penned in 1986. Although this concept is tongue-in-cheek, the issue of malpractice (not valpractice) remains very real in today's world. I do not believe that the number of cases that have the potential for litigation has decreased. On the other hand, case reviews, depositions, court trials, and arbitrations are fewer because they are so expensive. Over the years, a "cottage industry" was born. Expert witnesses in all fields, economists, and attorneys with specific expertise in medical malpractice proliferated. The judgments were often excessive and had to be modified in order to be appropriate in dealing with economic principles. The following illustrative scenario describes some of the aspects of both malpractice and valpractice.

"And so, members of the jury, I want you to look again at two-year-old Jason Carroll who, although born prematurely at 32 weeks of pregnancy, is perfectly normal today. This accomplishment was part of the team effort demonstrated by both the perinatal and neonatal health care network, but Jason's recovery from the most serious part of his illness was the result of the better care offered by Dr. Fairchild compared with that by Dr. Heller. Now, look into your hearts...your souls...and render a VALPRACTICE judgment in favor of Dr. Fairchild."

Allen Washington turned slowly away from the jury. His movements were well-practiced. Taking small steps, he passed the bench, nodded to me, and gracefully sat down.

I stifled a yawn, trying to appear professional, but was bored out of my mind. Today's schedule was full of these VALPRACTICE



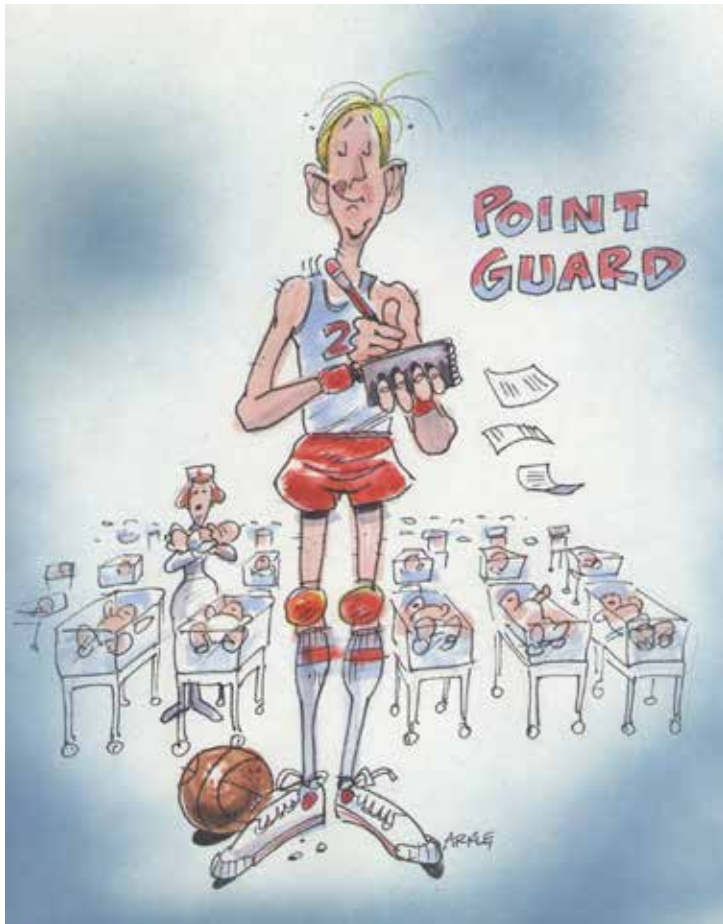
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cases. The pendulum was making full circle, and things would finally get back to normal...but when" The malpractice crisis reached its peak in 1987 when after three judgments of over 30 million dollars, all the insurance carriers quit. Doctors converted their assets; hospitals set up trusts and foundations; and suddenly there was no money for the patient or the lawyer. The most litigious law firms in the country began experiencing financial problems, and the public complained about "due process." They were right. For a period of time, there was "no process." Finally, in 1988, someone—to this day I can't remember who—coined the term VALPRACTICE. The expression was an abbreviation for "value in practice," and it rewarded the individual for the extra effort, the correct decision. In simple terms, it substituted a "val" for a "mal." Before long, the rules became extremely complicated. A panel in each hospital was created to determine whether "your care was better than my care." Points were offered for better judgment, extra time spent with families, quality and penmanship of patient notes, use of medications, and so forth.

This initial group of criteria soon expanded as nurses, social workers, and respiratory therapists became involved. A "point guard" was added to each hospital unit to assist in the judgment process.

The snowball continued. Doctors and nurses no longer had time to use handwritten notes, for the entries in the charts were voluminous. The medical record office soon ran out of room and personnel. Typing pools were enlarged immediately, and in fact, TPI (Typing Pools International), a small company that went public on the over-the-counter exchange on June 27 at six dollars a share, had split twice and was still 12 dollars a share by September 18. Hospitals changed their building plans and converted patient rooms into storage facilities for charts, typewritten reports, and copying machines. A new industry was formed.

The competition was fierce. Doctors wanted to work extra hours in order to spend more time with the patient and the family and rack up valpractice points. Nurses took double shifts, and one ICN nurse in San Jose broke the nursing work record by doing a "triple-double."



The library and research staff were overwhelmed with requests for literature searches as doctors proved their extra value with references and more references. The lawyers loved it. The insurance companies reappeared, quoting VALPRACTICE insurance and offering a part of the judgment to the family if something occurred that was of lesser value. That is, nothing was described in terms of malpractice or poor care any longer. If an error occurred, it was thought of in terms of being of "lesser value" than someone else's care.

Before long, the inevitable occurred. The court calendar became overcrowded, and it often took two to three years for a case to come to trial. The competition between self-interest groups eroded the team effort, and perinatal and neonatal mortality rates increased. It was obvious that a new type of tort reform was needed.

My reverie was broken as the jury returned to the courtroom.

"Thank you, ladies and gentlemen," I began. "Have you reached a verdict?"

"We have, your Honor," replied the foreperson, a heavyset woman with thick, red eyeglasses. "The jury would especially like to thank the respiratory therapist expert witness provided by both doctors

for clearly explaining the basic functions of the current equipment available." "In fact..." she continued. On with it, I thought...



"Several members of the jury are considering leaving their present fields of work and returning to school to become respiratory therapists."

"Please, please," I interrupted. "May the count have the verdict?"

"Of course. I am sorry, your Honor."

The jury felt that Dr. Fairchild demonstrated great value to the patient on the third day when oxygenation failed, and all respirator changes produced no improvement in the blood gases or clinical status. He changed to the Ultrasonic Cabal Company Friction Ventilator, and Jason suddenly improved. For this reason, we find Dr. Fairchild guilty of VALPRACTICE. In addition, we believe that Dr. Heller should be remanded for additional education courses focusing on the Ultrasonic Cabal Company ventilator."

"Thank you for your time and effort. The jury is dismissed, and this case is closed."

As the reporters scurried out of the courtroom to call in the stories, I wondered if a call to my broker about Cabal and Company would be considered as inside information.

I picked up the phone.....

Disclosure: Dr. Martin indicates no relevant disclosure.

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