

# MEDICAL SOCIETY OF THE STATE OF NEW YORK

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## **William R. Abrams**

*Executive Vice-President/Executive Director*

*August 5, 2009*

Dear Editor:

I am writing on behalf of the Medical Society of the State of New York (MSSNY) to comment on your recent article the highlighted cases of birth and other medical injuries. I am quite disappointed by the article. It highlights only cases of alleged medical error as told by trial lawyers and portrays our devoted physicians and other health care professional very negatively. More important, the article does not educate the public and worse yet, may prompt your readers to fear going to the doctor. By printing this advertisement for the trial bar, you have done a disservice to your readers.

In the area of medical liability and the need for reform, the medical profession stands for these very important principles:

- People who are injured as a result of a medical error deserve reasonable compensation.
- The determination of fault and level of compensation must be determined by consistent and predictable processes. The current process of civil litigation is inconsistent, not available to all injured parties and is certainly not predictable so that similar injuries will be compensated in similar fashion.
- We must establish a comprehensive system of quality improvement and outcome measurement that is evidenced based and developed by physicians for physicians. We are intrigued and excited about the current debate on comparative effectiveness modeling and eagerly look forward to participating in the dialogue and research.
- The current onerous and litigious system of determining medical liability seriously compromises the physician/patient relationship. We are committed to moving from a system of blame to a new system that is focused on prompt and thorough disclosure and communication, fair compensation to injured patients and ongoing learning and improvement.

So how to we achieve these goals? The Medical Society of the State of New York offers these solutions:

- Assemble medical technical panels to develop solid quality measurements and practice guidelines. An example to be easily adopted is the Physicians Consortium for Performance Improvement convened by the American Medical Association. The Consortium has in its membership over 100 medical organizations.
- Create Special Health Courts: Create a federal system of specialized courts with trained judges, court appointed experts and a set schedule of compensation for injuries. Such a system will bring consistency and predictability to determining medical liability and, hopefully, will enable more injured parties to recover compensation. The current civil litigation system is inconsistent and unpredictable. More important, many injured parties can never take part either because that have no access to legal assistance or their cases are not lucrative enough for a trial lawyer to invest the time and money to take them on. In medical liability cases, the trial lawyer's compensation is almost always based a percentage of any settlement or judgment. As such, a lawyer will only take a case if a lucrative settlement or judgment is likely.
- Encourage arbitration and mediation instead of litigation: These processes are more efficient, less expensive and less adversarial. They will improve the speedy remedy of disputes for all parties.
- Create a special system for resolution of claims and compensation involving neurologically impaired newborns: Such cases cited in your article are most regrettable. These cases are the most devastating both from the standpoint of the nature and gravity of injury and cost to society. Yet, in many of these cases, the science is lacking to justify negligence as the proximate cause of injury. Quite often, there simply has been a terrible and unforeseen outcome. Creating a special system (that could be part of health courts) to promptly address these unfortunate and very emotional cases would be good for all parties.
- Encourage and protect early disclosure of error, apology and of compensation: We must encourage and protect open and candid communication between a physician and his/her patient. Such open and candid communication is difficult at best when the outcome of such candor and openness is a lawsuit.
- Encourage the New York legislature to enact long overdue reforms such as discovery of the identity of expert witnesses, tightening of expert witness qualifications and absolute protection for all communication during a peer review meeting about a case. We must also bring stability and predictability to medical malpractice insurance premium rates and stability and growth to the carrier marketplace.
- Finally, a word about caps on non-economic damages: Caps work to control economic expenditures while still fairly compensating injured parties. Their success is documented in states like California and Texas. However, there exist reasonable arguments in opposition to

caps. The political environment in New York is also not ready even to have a discussion and debate on the issue. As such, the Medical Society has deferred discussion on this issue in the hope that all of the other solutions outlined above can be discussed and the substantive medical liability reform can be achieved in the near future for the benefit of all New Yorkers.

I stand ready to meet with the Journal's editorial board at any time and at your convenience.

Thank you for your very kind consideration of my comments.

Respectfully Submitted,

A handwritten signature in black ink that reads "William R. Abrams". The signature is written in a cursive style with a large initial 'W' and 'A'.

William R. Abrams  
Executive Vice President  
Medical Society of the State of New York