

Malpractice issues linked to quantity over quality care

BY JOSE ALVARADO VEGA
javea@sanjuanstar.com
of The Star Staff

Plaintiffs and lawyers involved in medical malpractice cases attributed errors and negligence in patient care to a health care system that awards doctors for quantity and not quality of care.

They said that many doctors see patients not as human beings but as numbers on a balance sheet. The managed care model that replaced the government-run system of hospitals a decade ago has encouraged the use of business-like criteria in determining patient care, they said.

Implementation of Health Care Reform a decade ago has filled up private clinics and hospitals with patients who used to go to public diagnostic and treatment centers and hospitals. The commonwealth program, in which private insurers at one point covered up to 1.8 million indigent patients on the island, provided a new source of income for private doctors.

But the high volume of Health Reform patients assigned to private doctors has increased chances for error and, as a result, of getting sued by patients. Doctors working in government-owned facilities get immunity from lawsuits. Patients treated by publicly employed doctors can only be compensated by

the government, which caps damages at \$75,000 per person and \$150,000 aggregate. Private doctors treating Health Reform patients do not get such immunity and are exposed to million-dollar lawsuits.

The number of medical malpractice lawsuits filed in commonwealth courts rose 63 percent between fiscal 1991, before the Health Care Reform program was implemented, when 197 cases were filed, and fiscal 1994, when 523 cases were filed. Since then, the number of cases filed in local courts each year has averaged between 500 and 600 cases.

Health Care Reform broke up a tiered public health system that treated patients according to severity of their illness, beginning at the diagnostic and treatment centers (CDTs) and ending at regional hospitals and Centro Médico in Río Piedras, the island's principal trauma center.

Today, many private obstetricians, gynecologists, orthopedists and neurologists send their most difficult cases directly to congested Centro Médico, where patients lie waiting for hours and even days for treatment.

Private clinics are equally overcrowded. "I often walk into a doctor's office and can hardly find a place to sit," said Erica Ortiz, who has a 13-year-old daughter who suffered brain damage allegedly due to the negligence of a



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neurologist. Ortiz and her husband, Roberto Rodríguez, sued the neurologist and Centro Médico, where their daughter was treated in 1997.

"It seems doctors seek volume to enrich themselves, and quality of care loses out," she said.

From intimacy to business

Under managed care, insurers make periodic disbursements of funds to primary care doctors for each patient under their care.

These doctors must use the money to pay for care these patients may require, including medicine, lab tests and care by specialists. They earn whatever money that is left over. Thus, the system encourages rationing of medical care by these doctors, who assume the role of financial gatekeepers.

"The relationship between doctors and patients in the past used to be more intimate,"

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said José Velázquez, a Ponce lawyer who has represented plaintiffs in malpractice cases for the past 25 years. He has written a book on the subject: "Doctors would listen more to patients. Now they just look at the patient for five minutes and send them on to a nurse. It's now all about seeing the most [number of] patients possible in a day."

With doctors seeking an increased volume of patients to earn their living, they are at a heightened risk of committing errors in caring for their patients, said Manuel San Juan, who has handled malpractice cases for plaintiffs as well as defendants.

"The use of business criteria to provide health care services gets doctors into trouble," he said.

The problem is not unique to Puerto Rico. The managed care form of medical insurance has been widely adopted throughout the mainland where similar controversy continues to reverberate.

Doctors want a fair say

Some 8,000 physicians in the Puerto Rico Medical Surgeons Association held an eight-day strike in 1996 to demand that the association be the sole bargaining agent for the island's physicians in the Health Care Reform and to allow doctors more control over funds disbursed by the program. After the Roselló administration filed a complaint at the Federal Trade Commission in 1997, the federal agency found that the association had "put the lives of patients at risk for personal gain" and ordered it to pay \$300,000 to the catastrophic fund administered by the commonwealth Health Department.

The association is now lobbying the Legislature to approve measures that would make it harder for patients to sue their doctors. Doctors — mostly specialists such as gynecologists, obstetricians and orthopedists — say that malpractice cases are causing their premiums and surcharges to go through the roof. Calls to association president Manuel Velázquez were not returned.

But plaintiffs and lawyers argue that the malpractice problem lies at the heart of the medical profession itself.

"Doctors may succeed in stripping away all of the patients' rights and manage to get a windfall for themselves and their insurance companies, but then the malpractice crisis will continue for the victims of medical negligence," Velázquez said.

Mistakes are not rare

Velázquez noted that studies have found that mistakes in medical treatment are not rare. He said a study by Colorado-based HealthGrades Inc. found that as many as 195,000 people a year could be dying in U.S. hospitals due to medical errors. The organization, which evaluates quality of care in hospitals in all 50 states, looked at three years of data on Medicare patients, which represent 45 percent of all hospital admissions. The study found that about 1.4 million "patient-safety incidents" — including failure to rescue dying patients and death of low-risk patients

from infections — occurred among 37 million hospitalizations nationwide.

"That's equal to the number of Jews gassed in Germany under Hitler," he said.

Indeed, a study published last year by the *Journal of the American Medical Association* ranked Puerto Rico behind all 50 states in quality of care given to Medicare patients.

Doctors risk committing medical malpractice when they resort to more complex treatments for ailments that can be cured through other means, Velázquez said. Many gynecologists and obstetricians perform hysterectomies — removal of the uterus — on women who have sterile fibroid tumors. These tumors aren't cancerous, but their growth can be debilitating.

Velázquez said the treatment has been "abused" by physicians on the U.S. mainland and Puerto Rico. In fact, the *Wall Street Journal* reported last month that many gynecologists are not telling their patients about a less invasive procedure called uterine artery embolization, which involves cutting off the blood supply to the tumors, causing them to shrink. Given that members of a specialty known as interventional radiology perform the procedure, gynecologists are less likely to recommend the alternative procedure and forgo \$400 million in annual fees for 200,000 hysterectomies performed each year in the United States, the journal reported.

"This operation [hysterectomy] should be a last resort," he said. "Hysterectomies have led to the early onset of menopause in women in their 30s. The wrong application of this treatment is akin to cutting off a foot with a toe that has an embedded toenail."

In fact, plaintiffs said that doctors often refuse to listen to doubts expressed by patients concerning treatment and medicine they administer.

"Doctors are often bothered when you question them," said José F. Torres, whose wife gave birth to a stillborn in 2001, allegedly due to malpractice committed by Ponce-based obstetrician José Rivera Méndez, who heads the Medical Surgeons Association in the southern region. Torres and his wife filed a \$2.5 million lawsuit in Ponce Superior Court against Rivera and Damas Hospital.

"They have this omnipotent attitude that says, 'I'm the doctor here,'" he said. "Now I take a notebook whenever a family member or I get treated in a hospital. I'm too skeptical of the system at this point."

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