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## Introduction Student Symposium - A Study of Medical Malpractice in Texas - Introduction.

Page Keeton

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## INTRODUCTION

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In response to assertions that a crisis exists with regard to the delivery of health care services, the legislature adopted some immediate measures for the purpose of minimizing the alleged crisis and its effects, one such measure being the creation of a Medical Professional Liability Study Commission. Other writers will be further reporting about this action in this symposium.

As a basis for the brief comments made herein about the work of the Study Commission up to this point in time, let me make some brief observations about the composition of the Study Commission. The statute provided for a Study Commission of 18, made up as follows: Two were appointed from the insurance industry by the newly created Joint Underwriting Association; two from the Texas Hospital Association, an important segment of the health care delivery system; two by the Speaker of the House from the legislature; two representing the consumer by the Governor; a State Senator by the Lieutenant Governor; two doctors by the Texas Medical Association; two practicing lawyers from the Texas Bar Association; one insurance agent appointed by the Texas Association of Insurance Agents; another from the insurance industry designated by State Farm Insurance Company; another from the insurance industry designated by Allstate Insurance Company; another lawyer designated by the Insurance Counselors of Texas; and I was chosen to be Chairman by the Lieutenant Governor pursuant to the terms of the Statute. The Study Commission was created for two general purposes: (1) to gather information and do research related to the causes for the alleged crisis, and (2) to make recommendations as to possible solutions on a more or less permanent basis.

On the basis of the work done thus far, the commission is prepared to say in the first place that there *is* a serious problem in the delivery of health care services as a consequence of the high cost to health care providers of liability insurance. It is not inappropriate to refer to the situation as a crisis. Tentative recommendations have been approved already as to three matters, admittedly not of themselves of great significance, but these recommendations are indicative of the fact that some progress is being made. These recommendations are as follows:

(1) The prayer for relief in the pleadings as regards all personal injury suits should not include a request for a specific sum of money as damages.

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Rather, plaintiff should request such damages as plaintiff is entitled to under the law and the evidence;

(2) No claim is to be allowed against a doctor on the theory that he guaranteed to cure unless the guarantee is in writing and notarized;

(3) The liability insurance policy should contain a provision excepting from coverage any liability of the insurer to the insured for punitive damages.

The Study Commission has been subdivided into five committees, with each committee assigned tasks centering around a particular facet of the crisis. These subcommittees will in no sense make decisions for the commission but will rather prepare material and lead the discussion on issues related to their task. These subcommittees and their responsibilities are as follows:

*Subcommittee I*

The scope of the medical professional liability problem.

(A) Claims and losses now as compared with a named previous time.

(B) Insurance premiums now as compared with a named previous time.

(C) Reasons for increases in losses and increases in premiums.

*Subcommittee II*

The effect of the medical malpractice crisis on delivery of health services and changes in insurance costs.

(A) Magnitude of impairment in health care services as of now and magnitude of threatened impairment to those services.

(B) Increased costs to patients, including defensive medicine and medical fees and hospital charges.

(C) Problems related to the medical profession and delivery of hospital services including licensing revocation procedures and other matters that may contribute to the number of mishaps in this area.

*Subcommittee III*

Problems related to contracts of insurance, including terms of contract and methods for establishing rates. (Also may deal with proposals for any changes in the contract and techniques for establishing rates, and may provide a discussion of the different techniques).

*Subcommittee IV*

Substantive issues relating to the existing court compensation system and proposals for change, with discussion of those problems.

*Subcommittee V*

Measure of recovery under existing tort system and proposal for change, and legal professional problems related to the question, including the contingency fee system and matters of professional responsibilities.

It is not difficult to perceive the existence of a crisis. It is, however, a formidable task to identify the significance of the various causes for the crisis. As is true of nearly every consequence, there are of necessity a variety of causes. Solutions ought not to be proposed without fairly reliable information as to the impact of each of the various causes. There are those who feel that *the primary* cause for the crisis is large verdicts, and if that were so then no doubt that matter would be virtually *the only* problem. There are others who feel that *the primary* cause for the crisis is the existence of so much lack of attention to quality control in hospitals and to the weeding out of those who are incompetent and habitually careless in the carrying out of their responsibilities, and if this be the primary cause then proper regulation directed at better quality control in the delivery of health care services would be the only problem for resolution. There are those who feel that the unregulated rates of the insurers have been completely unjustified and that therefore *the only problem* is that of proper regulation of rates. In other words, there are numerous charges and countercharges. I am confident, however, that there is no one primary cause, but a variety of causes. The most difficult task of the Study Commission will be that of gathering the kind of information that will reveal the impact of various causes. These various causes include such matters as unmeritorious claims, large verdicts, claims filed long after the occurrence, the method for fixing rates, the kind of insurance policy that should be permitted and the extent to which the provisions are dictated by a regulatory agency, the tort compensation damage system including recoveries for pain and suffering, the licensing procedures for doctors and hospital practices and regulations, the substantive tort law doctrines about informed consent, the standard of care applicable to health care providers, and finally the contingency fee system.

I commend the *St. Mary's Law Journal* in preparing this symposium issue. It ought to be of significant assistance in resolving the medical professional insurance crisis in a way that will best serve the people of Texas.