

## Medical malpractice suits drop but take a toll

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By Steve Twedt, Pittsburgh Post-Gazette



Stacy Inners/Post-Gazette

Plastic surgeon Amelia Pare gave up doing breast reduction procedures after she was sued four times in one year. One case is still pending, two suits were dropped, and she won the other.

In the four years since, she hasn't been sued. But, unsure she could get insurance for that procedure, she still declines all requests for reduction surgeries.

For general surgeon Judy Ross, the result was more final -- after being sued three times in less than 18 months, her malpractice insurance company told her it would not renew her coverage. She now works as a regional medical director for a local firm, at half her previous salary, where she reviews worker's comp and family leave issues but sees no patients.

The threat of lawsuits is even greater for other specialties. When it comes to the number of claims filed, surgeons are named less frequently than family practitioners and internists, and all of them have fewer claims than obstetrician/gynecologists, according to the Physician Insurers Association of America's "2009 Risk Management Review: General Surgery."

The overall median for all paid claims was just over \$200,000.

"Malpractice provides a way for both the plaintiff and the doctor's lawyers to be paid, and the people who lose are the patients and the doctor," said Dr. Pare.

Patients lose, she said, because they will have less access to the doctor, see increased costs, have more limited services and be subjected to increased testing. Doctors take a direct hit financially, in legal costs and increased insurance premiums, as well as emotional stress, she added.

"Nobody's talking about [getting sued]. I don't want to talk about it," said Dr. Pare. "But the more you talk about it, you realize it's happening to everybody else."

A recent survey of members by the American College of Obstetricians and Gynecologists revealed that 90 percent of obstetricians and gynecologists have had a

liability claim filed against them at least once, and that more than 60 percent have changed their practices because of liability concerns -- some have stopped doing obstetrical deliveries completely.

James A. Goodyear, president of the Pennsylvania Medical Society, cites state Supreme Court data showing that juries for medical malpractice claims decide in the physician's favor 85 percent of the time, which he says is "possibly a sign that too many claims are advancing that shouldn't."

Joshua P. Geist, trial attorney for the Downtown law firm Goodrich & Goodrich and president-elect of the Western Pennsylvania Trial Lawyers Association, doesn't dispute the 85 percent figure, but notes, "that isn't necessarily an indication of the merits of the case."

Since 2002, he said, parties filing medical malpractice claims must first have their complaints reviewed by medical experts to decide if they have merit.

As a result, medical malpractice filings statewide have decreased from 2,632 in 2000 to 1,533 in 2009, state court records show. In Allegheny County, the filings have gone from 390 yearly to 263 in that same period.

National physician organizations have expressed their disappointment that health care reform didn't make more progress on medical liability reform, perhaps setting caps on damages as some states have done. They point to Congressional Budget Office estimates that tort reform would save about \$54 billion in health care spending.

But tort reform "just puts more restrictions on individual rights," said Mr. Geist. "I see every day the emotion and financial strain that victims of malpractice go through, and that's there whether they win their lawsuit or not."

In a profession where six-figure salaries are the norm, outsiders may downplay medical malpractice lawsuits as an expected cost of practicing medicine. But doctors say they take an emotional, as well as financial, toll.

"People don't understand that the minute that [civil suit] paper is delivered, I've lost," said Dr. Ross. "It doesn't matter if I win the case, whether I lose the case, whether the case is dropped, whether I'm excused from the case. The minute that piece of paper walks into my office, the malpractice company says, 'You've just become more expensive for us.'"

A graduate of the University of Pittsburgh Medical School, Dr. Ross worked as a surgeon at St. Clair Hospital in Mt. Lebanon, removing gallbladders, repairing hernias and doing breast biopsies and mastectomies -- performing five to 10 procedures each weekday for more than seven years.

Then, after two lawsuits were filed against her in a matter of months, her medical malpractice insurance carrier dropped her, and other insurers were asking premiums upward of \$200,000 yearly.

She decided instead to stop seeing patients.

"Eventually you get to the point where every person who walked into my office was not someone I could help, but someone who could potentially sue me. It was time to

get out."

Dr. Pare, a Harvard undergrad who earned her medical degree at Drexel University and did her surgical training at Columbia and UCLA, said even winning a case costs in lost time with patients and lost revenue. Meanwhile, doctors still have to meet payroll and other overhead costs.

"In a society where you are innocent before you are proven guilty, your [insurance] rates immediately go up when you are sued, and you may lose your insurance before you can even defend yourself," said Dr. Pare.

And that's not accounting for the emotional cost, said Dr. Ross.

"When people hit you with a lawsuit, they don't think about the impact that has," she said. "It makes you feel like you're the worst person in the world. It makes you feel like all your years of training and working with people were for nothing."

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