

A Case for a National Health Care System:

ONE DOCTOR'S PERSPECTIVE

By Stanley A. August, MD '69, JD

A recent headline on the front page of the *New York Times* read as follows: "The Doctor is in—And You Wish He Wasn't." It went on to describe the growing dissatisfaction the American people are developing with their medical care. The dissatisfaction includes complaints such as "My doctor doesn't talk to me" to "My doctor spends very little time with me" to "I wait a long time in his office until he calls me" to "he just doesn't seem interested." They don't understand what the cause is that is fueling this marked change in the medical system of the country and the change in physician's attitudes.

The cause is easy to elucidate: Congress, in its inability to develop a health care program for the nation, coupled with the desire to cut costs, has relied on the insurance industry to oversee the program. The goal of insurance companies is also to cut costs, but at whose expense? Are they achieving their goal by withholding coverage from their membership in order to decrease expenses? While I agree that decreasing the cost of medical care is a prime interest of the government, I don't believe that it wants to achieve this at the expense of the health care of the population.

The medical system of the United States consists of two parts; one part is the knowledge that is contained within the system. For the past 50 years, the physicians in the United States have had the luxury of having the most up-to-date information. During this time, they have wiped out such

diseases as Measles, Mumps and Rubella (German Measles), and have seen Polio, the nightmare for mothers in the 1950s, go the way of the Dodo. Transplantation of organs such as liver, kidney, and heart, once the realm of science fiction, is now routine. Tests that are routinely ordered today did not exist when I was in medical school in the 1960s. We now stand on the frontier of potentially fabulous gene therapy, which offers hope to so many people. It is both safe and accurate to say that the state of medical knowledge in the United States has never been greater.

An Insurance-Driven System

The problem that exists is with the second part of the system, the delivery of services, and it is in this area that we are experiencing a meltdown. The insurance industry has drastically affected the reimbursement rates of doctors, hospitals, and pharmacies. Additionally, the insurance companies limit the coverage allowed the patient, which has the effect of delaying and perhaps preventing the patient from receiving the appropriate care with potentially disastrous results. Little has been done to force the insurance industry to provide the necessary coverage. This has led to new causes of action for malpractice claims against the doctor, adding to the negative spiraling effect on the delivery of health care.

The following example illustrates this point. It is based on a long-standing legal principle, that the physician is the patient's advocate. Under this principle, the physician must

exert all effort on behalf of his patient so that the patient receives the maximum care available. As the insurance industry continues to refuse coverage for a variety of illnesses, the physician finds himself spending more and more time on the telephone arguing with insurance companies and finally giving up. By not getting his patient the appropriate approval and ceasing to act further, the physician may be considered to have committed malfeasance. The doctor, by not getting his patient the care the physician deems necessary, violates his legal duty of being the patient's advocate and depending on the situation, the malfeasance may lead to a malpractice claim against the physician.

Such a situation could exist with the birth of a newborn infant in the hospital. Most pediatricians would prefer to keep this newborn in the nursery for 72 hours to see if any problems arise. The insurance company, however, insists that the child be discharged at 36 hours to save money. The doctor generally acquiesces to this insurance fiat. If the newborn develops any problem at home after discharge, the doctor will be held liable for malpractice because he has "missed something." Every time a doctor violates his advocacy obligation, his liability potentially increases and malpractice claims may follow.

In order to protect themselves, the insurance companies usually place a "hold harmless" clause in the contracts they require doctors to sign. They claim that they are insurance companies only and that they do not practice medicine, leaving the medical



WILLIAM REISER

decisions to the physicians. However, by denying a physician the ability to obtain the necessary procedures for his patient, they are in essence practicing medicine and placing doctors in a "Catch-22" position. As a result of the interference by the insurance companies in the physician's deliverance of care to their patients, physicians are no longer independent. Their medical decisions are often influenced by the coverage allowed by the companies. Therefore, optimum medical care is limited or not available as it was before this present system evolved.

Additionally, government interference has had its negative effect both at the federal and state levels. For example, CLIA (Clinical Laboratory Improvement Act), passed in 1988 and implemented in 1992, was supposed to force physicians to upgrade the maintenance of their office laboratories. It allowed for a "compliance fee" (a form of "tax" based on the office's laboratory volume and was supposed to be self-funding.) What happened was that doctors closed their office laboratories and began to send their patients to outside clinical laboratories, thus creating

an imposition on patients, especially the elderly. Furthermore, the recent implementation of the privacy act, HIPAA, has added tremendous stress and cost to physicians' practices (not to mention other professions and businesses).

In New York, for example, the section 405 rules of the Public Health Law limit the number of hours a resident can be on duty during a week to 80 hours. This has forced hospitals to hire physicians at a salary of up to two to three times of a resident, causing a financial burden on the hospital.

These changes that have been imposed on physicians have had the reverse effect of raising health care costs instead of the intended lowering of costs. The average health care policy for a family of four generally ranges from \$8,000-\$10,000 a year depending upon the type of coverage that was purchased from the company. Medications have become astronomical in price and the cost of laboratory tests and radiological diagnostic procedures has become far too high. As a result of this and other reasons, almost 15 percent of the population of the United States has no coverage. This means that between 40 and 50 million people are uninsured. Many of them make up what is called the "working poor" and include large numbers of women and children. This is because the United States is the only Western nation without a health plan for its citizens.

A further example of government interference in doctors' practices in New York State is the recent addition to the State's Public Health Law, which, as of April 2006, requires physicians to obtain their general office prescriptions from the state. Further, the state will not, at least initially, charge them for the printing and the mailing. Doctors in New York are no longer allowed to print up their own prescriptions; rather, they will now be dependent upon government mail order. Former Governor Pataki, in explaining the need for this change, states that it would aid the Department of Health in combating medical fraud. At the same time, Pataki was calling for a new agency to deal with Medicaid fraud because the Department of Health was unable to perform its assigned task.

The response by physicians to this attack on their profession has been varied. The effect of the doctors' response has in general been negative with respect to the care of the patient. For one thing, their attitudes toward the practice of medicine have



changed. They don't seem interested in what they are doing in their practices, and are more likely to commit errors in medical judgment. Many physicians are now considering taking early retirement as an alternative. Patients often complain of lack of physicians' personal attention during a visit. This is caused by the physician needing to increase his volume in order to recoup the loss of income caused by a decrease in insurance reimbursements. A recent *New York Times* article stated that the New York City Health and Hospitals Corporation released figures showing that the number of malpractice claims filed against the city had increased over the previous year of 2004.

Fee for Service Treatment

Many physicians have ceased accepting any insurance coverage. Instead, they are asking patients to pay cash for treatment. It has become more difficult in certain geographical areas for patients to find a doctor willing to accept the patient's insurance. This drastically impacts on the medical concept of "continuity of care" in which the physician has cared for a patient for a long time and knows him very well. Today, many physicians are complete strangers to their patients, treating them only because they accept the patient's insurance.

As a result of not accepting insurance and requiring the patient to pay in cash, the doctor may leave himself open to a charge of abandonment of his patient. It is well documented that a doctor may cause a patient to leave his practice, i.e., to get rid of the

patient. For example, the patient may be non-compliant by not following the doctor's directions for care. Additionally, the patient and doctor may have personality conflicts, which prohibit the continuance of care by the physician. If the physician decides to leave an insurance panel, another physician must be identified to treat that patient. The preceding physician must continue to see the patient until another doctor is found to assure the continuity of treatment.

A charge of abandonment by a patient against a physician may have serious consequences. Initially, an investigation by the discipline committee of New York State may lead to sanctions against the physician or eventual suspension or loss of his license. Furthermore, an abandonment charge may prove to be a cause of action for malpractice litigation against the physician.

Although it is rare for such a case to be initiated, it may be more prevalent in the future, with the changes in the method in which the physician chooses to be paid by the patient. It is possible that in certain circumstances, such as a patient dying as a result of "abandonment," a physician could be charged with criminally negligent homicide as stated in the New York State Penal Code.

It is evident that the medical system in the country is in great difficulty. If nothing is done to correct this collapse, medical care for many of the populace may be unavailable.

One solution to this problem is the establishment of a National Health Care Plan. The term "national" does not refer to socialized medicine. Such plans have been tried in the past and have failed. One just needs to look at England's socialized health program to realize that such a system could not operate in the United States.

This must be a completely new system, not just a financial reorganization of the

Medicare and Medicaid systems with insurance companies participating in their usual manner. If that situation were to occur, the health care system of the nation would stay the same, but the delivery of services to patients would cost even more than it does today.

Certain elements of the present system must be reevaluated, such as the continuation of Medicaid and Medicare. This plan cannot include the participation of insurance companies that are only interested in making the most profit they can. The pressure of needing to make a profit cannot tinge and affect the health care plan that should be developed. The catastrophe of Hillary Clinton's 1993 Jackson Hole medical plan cannot be repeated. The plan must offer coverage to all Americans at the same level of care, but unlike the English and Canadian systems, should not be free. The cost of the plan should be shared among the populace and the government. The percentages would be determined after careful study of data.

Other elements of health care, which contribute to high cost, will have to be addressed. These include medical malpractice, the cost of medications and the poor distribution of the physician availability pool across the nation. The astronomical cost of becoming a doctor should also be evaluated if the best and the brightest candidates are to continue to populate our medical schools.

Such an all-encompassing change in the health care system is, I believe, possible and necessary if we are to continue to have the best health care system in the world. I truly believe that such a plan can be achieved. It would take a lot of work, but it can be done.

This article was reprinted with permission from the Spring 2006 New York State Bar Association Journal.

About the Author:

Dr. Stanley A. August earned his MD from Upstate Medical Center in 1969 and became a board certified pediatrician. Ten years later, he enrolled in Brooklyn Law School and became a lawyer to better understand the relationship of law to the medical profession.

He has been in private practice in Brooklyn, New York, for more than 30 years and has treated generations of families in the same community, earning the reputation as an excellent diagnostician.

Dr. August has handled some very interesting medical cases in his law practice and has represented doctors in suits against Medicaid and insurance companies. "Much of what I do is not malpractice but administrative medical law," he says. "For example, if a physician gets audited and he wants representation, I'm the one he comes to."

His dual interest in both medicine and law keeps him very busy.

August believes that there are legislative and governmental mandates that affect the physician's practice of medicine. For example, vaccines are mandated before research is completed on the possible side effects. Also, the CLIA Act of 1988 resulted in the closing of many labs in private practices.

He also strongly believes in the need for a national health care plan. "A patient may see a doctor for 10 years. Then the patient's insurance changes, the doctor doesn't take that insurance, so the patient has to go elsewhere. The continuity of care that used to be commonplace is ceasing to exist," he says.

The quality of medical care has been the utmost concern to Dr. August and motivated him to write this article.

—Renée Gearhart Levy

