

## **Reducing Medical Malpractice: Tort Law Reform Is Not the Key**

In his editorial on medical malpractice in the November–December 1987 issue of *Public Health Reports*, Assistant Secretary for Health Robert E. Windom, MD, paid brief homage to the real issue, stating “. . . the most important interests are those of the patient.” He then went on to display a callous disregard for those interests.

The report of the HHS Task Force on Medical Liability and Malpractice made 10 recommendations under the heading “Health Care” that could serve the interests of patients by reducing malpractice and thus malpractice liability. Among them were “. . . assure that their [State] medical boards have sufficient funds to conduct an effective disciplinary program”; “Risk management activities [hospital] should be encouraged”; “Quality assurance activities should be encouraged”; “The Federal Government, Peer Review Organizations (PROs) and state licensing boards should work together to develop systematic methods of exchanging information.”

But Dr. Windom, after no more than cursorily noting that there were recommendations for improving the quality of health care in the report, went on to list only the details of what he called “seven significant recommendations” in the report, all of which were directed to making tort law changes, mainly contrary to patients’ interests. None of the 10 health care recommendations partially listed above made it into these 7 significant recommendations.

So-called tort reform in the 1970s did not work, as evident from the malpractice “crisis” of the 1980s. And it’s not working in the 1980s, except to increase insurance company profits.

In contrast, the Health Care Improvement Act of 1986, the first major Federal legislation in this area, is directed to reducing malpractice, not through tort “reform,” but by identifying negligent, incompetent, and impaired physicians and by improving the credentialing and disciplinary processes for the medical profession. The Secretary of Health and Human Services is given a major role in carrying out the provisions of the Act. Let’s hope the Secretary’s malpractice report and his Assistant Secretary’s summary of it are not indicative of how well this role will be carried out.

*Sidney M. Wolfe, MD, Public Citizen Health Research Group, Washington, DC*

## **Dr. Windom Replies**

The Report of the Secretary’s Task Force on Medical Liability and Malpractice contains recommendations in the areas of health care, the legal system, alternatives to litigation, and insurance. The recommendations call for action by the Department, the States, and the private sector. Because three of the principal areas of activity—physician discipline, tort law, and insurance industry oversight—are within the purview of the States, there is a strong emphasis on State action in our report.

There is no denying that our November–December editorial highlighted legal changes. We wanted to raise these issues as State legislators in many of the States prepared to meet early this year. Also, to assist the States, the Department developed model legislation, which we were distributing at that time to the States for their consideration in December, that addressed the key points in the editorial.

But our emphasis on legal change in the editorial in no way diminishes the importance the Department, and in particular the Public Health Service, places on the report’s health care recommendations. Dr. Wolfe correctly notes that these recommendations serve the interests of patients. Within the Department, responsibility for most of the activities arising from these recommendations is lodged within the Public Health Service, and a variety of activities relating to credentials review, risk management and quality assurance, and public and professional education are now planned or underway.

Our new responsibility for the data bank authorized by the Health Care Quality Improvement Act is a focal point for this activity. Funding difficulties have prevented us from awarding a contract for the data bank up to this point, but we are doing all we can, absent a contract, to move forward. A Notice of Proposed Rule Making regarding the data bank was published March 21 in the Federal Register.

*Robert E. Windom, MD, Assistant Secretary for Health*