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Panel Seeks Better Disciplining of Doctors

By ROBERT PEAR - The New York Times

WASHINGTON, - Experts retained by the Bush administration said on Tuesday that more effective disciplining of incompetent doctors could significantly alleviate the problem of medical malpractice litigation.

As President Bush prepared to head to Illinois on Wednesday to campaign for limits on malpractice lawsuits, the experts said that states should first identify those doctors most likely to make mistakes that injure patients and lead to lawsuits.

The administration recently commissioned a study by the University of Iowa and the Urban Institute to help state boards of medical examiners in disciplining doctors.

"There's a need to protect the public from substandard performance by physicians," said Josephine Gittler, a law professor at Iowa who supervised part of the study. "If you had more aggressive policing of incompetent physicians and more effective disciplining of doctors who engage in substandard practice, that could decrease the type of negligence that leads to malpractice suits."

Randall R. Bovbjerg, a researcher at the Urban Institute, said, "If you take the worst performers out of practice, that will have an impact" on malpractice litigation. "Most doctors have few or no claims filed against them," he added. "But within any specialty, a few doctors have a high proportion of the claims."

The focus on doctor discipline is noteworthy because Mr. Bush, in numerous speeches, has sided with doctors against plaintiffs' lawyers.

Mr. Bovbjerg said several factors appeared to work against medical boards. The boards usually have small budgets and small numbers of employees to cope with thousands of complaints each year, he said. Moreover, he said, revoking an incompetent doctor's license can take months or years and cost a great deal, especially if the case goes to a full hearing before a board of examiners.

State medical boards took 5,230 disciplinary actions against doctors in 2003, according to the Federation of State Medical Boards, the national umbrella group for the state agencies. The total was up 7 percent from 2002 and up 41 percent from 1993.

Timothy S. Jost, a law professor at Washington and Lee University and a former member of the Ohio State Medical Board, said: "It is extraordinarily difficult to discipline a doctor based on incompetence. Everybody knows that some doctors are incompetent, but identifying them is a very difficult task."

Massachusetts has adopted an approach that experts say may provide a model for other states. Without waiting for a complaint to be filed, the Massachusetts Board of Registration in Medicine conducts a clinical review of any doctor who has made three or more malpractice payments to patients as a result of jury verdicts or settlements.

Nancy Achin Audesse, executive director of the board, said: "Three is a magic number. Doctors who have to make three or more payments are also more likely to be named in consumer complaints and to be subject to discipline by hospitals and the medical board."

In Massachusetts in the last 10 years, Ms. Audesse said, "one-fourth of 1 percent of all the doctors - 98 of the 37,369 doctors - accounted for more than 13 percent of all the malpractice payments, \$134 million of the \$1 billion in total payments."

On Wednesday, President Bush is to take his campaign to Collinsville, in southwestern Illinois. The city is in Madison County, where business groups say judges often favor plaintiffs in personal injury suits.

In December, the American Tort Reform Association, a coalition of business and professional groups that want to limit personal injury suits, called Madison County the nation's No. 1 "judicial hellhole."

Laws governing malpractice cases have historically been controlled by the states. But Scott McClellan, the White House press secretary, said Tuesday, "It's a national problem that requires a national solution."

Mr. McClellan asserted that "unlimited and unpredictable liability awards raise the cost of health care for all Americans through higher premiums for their health insurance." And rising costs of malpractice insurance have forced some doctors to "close up shop," he said.

But Representative Jan Schakowsky, Democrat of Illinois, said: "President Bush is offering a solution that is irrelevant to the problem. The insurance industry has repeatedly refused to say that it will lower rates even if caps are imposed."

The House has passed several bills that would set a \$250,000 limit on payments for noneconomic damages like pain and suffering, but the measures have died in the Senate. White House officials said they hoped such legislation would sail through Congress this year because Republicans gained seats in the Senate.

Dr. James N. Thompson, president of the Federation of State Medical Boards, said that most disciplinary actions had been taken because of criminal conduct, drug or alcohol abuse, sexual misconduct or other unprofessional behavior.

"But increasingly," Dr. Thompson said, "state boards are taking disciplinary action because of issues involving the quality of care. They are trying to identify doctors who provide marginal or substandard care, before the doctors put more patients at risk."