

Eighteenth Annual History of Medicine Banquet

The annual history of medicine dinner and lecture will be held in the Spring. The speaker, date, and the topic will be announced at a later date.

Greasewood Electronic Mailing List

We have created an electronic mailing list if you wish to receive Greasewood Tablettes online rather than in the U.S. mail. Please send your email address to:
tgarrison@medicine.nevada.edu

A Call for Essays by Doctors for a Book on Doctoring in Nevada

Our objective: We are gathering information from a cross section of Nevada doctors on which to base a book on doctoring in Nevada with stories, poems, essays, and history. We would like you to contribute the story of your professional experiences. Please describe the best of times and the worst of times in your practice using the suggested 18 points as a guide. If you would like to express yourself in a poem or blank verse, please do. Remember, you are passing on hope and confidence in healthcare to the next generations of physicians and the general public. You can email or send your response to Sohn or Daugherty.

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The History of Medical Malpractice in Nevada

By Thomas Brady, M.D. FACS

Dr. Brady is past president of Washoe county Medical Society, Nevada State Medical Association, and the Western Section of the American Urological Association.

Practicing medicine in Nevada, over the last forty years, has been complicated by medical professional liability issues.

Perhaps one of the most serious adverse effects of malpractice, from a doctor's point of view, is its impact on the physician-patient relationship. It is essential that an open, trusting, caring, and aggressive doctor-patient relationship exist for the best medical care. If physicians see patients as potential adversaries, medical care clearly will suffer. We have always been

patient advocates – not their adversaries.

During the period 1935 to 1975, 80% of all malpractice lawsuits were filed in the last 5 years of that period. Amounts awarded to plaintiffs were going up because of the influence of inflation, increasingly liberal judges and juries, and aggressive trial lawyers. From 1974 to 1976, under-prepared and under-funded professional liability carriers or insurance companies left the market and a crisis of availability of insurance developed. Some physicians went bare and had no insurance.

To help solve the problem, Nevada created a physician-owned, non-profit insurance company, Nevada Medical Liability Insurance Company (NMLIC). About the same time Doctors Company was created in California. This relieved the availability of insurance problem. Nevada had ventured into voluntary medical-legal screening panels in the 1960s. The idea was to keep frivolous lawsuits from going to court and provide quicker settlements when malpractice and injury occurred. Hopefully, this would also lower costs. In 1975, the Nevada Legislature made these voluntary panels mandatory for all claims. The panels were less than satisfactory because 30% of claims rejected by the panels went to court anyway. There were so many claims that the panels were terribly back-logged and the plaintiffs' attorneys used the panel as a means of discovery using the accumulated information in subsequent litigation. As frustration with the

panels rose, the trial lawyers, insurance companies, and doctors all joined in lobbying the legislature to again make this medical-legal screening panel voluntary and this passed in 1981.

Costs for liability insurance continued to soar. Malpractice insurance premiums increased on average of 22% per year from 1980-1985. Multi-million dollar judgments became more common in areas such as neonatal pediatrics, neurosurgery, and especially obstetrics. The coverage available was \$1 million per case and \$3 million total. Since almost all the babies delivered in rural Nevada were delivered by family practitioners, they simply could not afford the \$36,000 per year cost of insurance and stopped delivering pregnant women. Obstetrics in rural Nevada was gone, and a new crisis developed.

In 1985, the Nevada State Medical Association began a long and ultimately successful lobbying effort for TORT Reform. This effort was opposed by the Nevada Trial Lawyers Association (NTLA). The four basic TORT Reforms proposed were:

- 1) Limits on liability (cap on awards for non-economic loss)
- 2) Periodic payments of court awards (In lieu of lump sum payments)
- 3) Limitation of attorney contingency fees (sliding-scale increments)
- 4) Collateral source payments (prevention of double payments in court awards)

I was involved in the lobbying effort and there were many intense discussions with the trial lawyers and legislators. Finally, a deadlocked legislature and the Judiciary Committee led by Bob Sader directed us to meet and make a compromise proposal. Bill Bradley, David Gamble, Anton Sohn and myself met and the outcome was a new medical-legal screening panel. The new panel was much more effective.

- 1) It was mandatory;
- 2) It was based on records only (the plaintiff and defendant did face each other);
- 3) The results were admissible in court;
- 4) If the panel found for the defendant and the claimant lost in court, the defendant must be awarded costs and attorney fees; and,
- 5) If the panel found for the plaintiff, a settlement conference must be held.

The new medical-legal screening panel proved to be successful, but the battle for real TORT Reform was just started. The issue of medical malpractice would not go away despite the success of the screening panel. Medical liability created tension between the professions of law and medicine.

Physicians believe that reform of the TORT system is needed because the present system is too slow, too expensive, unfair, and doesn't take into account the life and death decisions that doctors face and make and confront daily. They believe that a system which

gives an average of 30 to 40 cents per dollar awarded to the injured patient is not effective.

Lawyers, on the other hand, see the TORT system as a fundamental part of our social system which rights civil wrongs and holds doctors accountable. They see themselves as instruments of rectification and justice. As such, the face-off has stood. It would not end until 2005 when true TORT Reform was passed through the initiative process on the public ballot and then enacted by the legislature. At that time, the medical-legal screening panel was abolished and, in retrospect, many wish it was still in effect.

Nevada's First (Full-time) State Health Officer

Note: the following article is the result of an inquiry by Melanie Minarik, PhD., and Trudy Larson, M.D., who are interested in naming an award at the School of Community Health Science at UNR in honor of the first Nevada Health Officer. In such matters I routinely turn to Guy Rocha, who furnished much of the following data.

The law creating the Nevada State Board of Health was enacted in 1893, and a number of physicians were appointed to the board. They were Nevada's part-time health officers. According to Dr. Don Kwalick, who was appointed State Health Officer in 1997, Dr. John Edward Worden was the first full-time officer. John was born in Canada in February 1875. By 1892 he was living in Milwaukee, and on June 15, 1889, he graduated from Northwestern Medical School. Dr. Worden



John Worden (1875-1959)

studied public health at the University of Michigan and was licensed in 1908 in Fallon where he was Churchill County Health officer.

In 1916, he moved to Elko and was appointed its county health officer. In 1936, Governor Richard Kirman appointed Dr. Worden State Health Officer with the princely salary of \$2500. Governor Kirman asked for his resignation two times in 1938 because Worden ran for the U.S. Senate, and Kirman felt this was a conflict of interest. Worden refused both times, but in 1939, he resigned after a severe injury resulting from an auto accident. That year he moved to San Francisco to live with his daughter. He died there in 1959. His obituary is in the December 29, 1959, Reno Evening Gazette. It includes this picture of him and states that he had two children—a

son, Lt. Col. J.E. Worden, Jr., and a daughter, Shirley. According to Rocha, "Dr. John Worden, without question, deserves the honor (of an award in his name) for his thirty-one years of public health service to Nevada."

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Introduction: Noted author, poet, and physician, William Carlos Williams (1883-1963) wrote:

"It's the humdrum day in and day out everyday work that is the real satisfaction of the practice of medicine.... But the actual calling on people, at all times and under all conditions of their lives, when they were being born, when they were dying, watching them die, watching them get well when they were ill [is the essence of medicine]."

(You may think your practice is humdrum, but it is your life and the life of your patients.)

Include:

1. What years did you practice in Nevada, where, and what was your practice?
2. Why did you choose to practice medicine in Nevada?
3. Does your practice differ from how you envisioned it while in medical school?
4. How did you expect your future would be when you were in medical school?
5. Would you go to medical school again, if not, what would you most likely be doing?
6. Who in medicine influenced you the most? Did you have a mentor? You don't need to provide a name.

7. Have you seen the Golden Age of Medicine in your practice? Alternatively, what do you envision as the golden age of medicine—past, present, or future?

8. What do you see as the future of medicine—for physicians, and patients?

9. Have you been involved in teaching medical students or residents? If so what was your experience?

10. What are your activities outside of your practice?

11. How do you keep a balance between your practice and your personal life?

12. What do you see as the most important attributes a physician should have?

13. Share some interesting,

painful, or humorous experiences from your practice?

14. What would you change, vis-à-vis insurance, malpractice, or government involvement?

15. Have any of these factors changed the way you practice medicine?

16. Did we lose control of medicine's future? Did we ever have it? Should we have it? Who should decide on the future of healthcare? Politicians? Citizens? Doctors? (How should we as a country decide on the future of healthcare)

17. Is entitlement to healthcare a right? Who should pay for the poor or those without insurance, Medicare, or Medicaid? What do you see as the

pros and cons of the Health Care Reform Act passed by Congress in 2010? How will it affect the health of our nation. Will it change the practice of medicine?

18. What is the best way for those without insurance to access the healthcare system?

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