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Defence societies' price war

May lead to crown immunity

The Medical Defence Union recently settled a claim over a brain damaged baby born in 1965 for £550 000, more than its entire income in that year. The defence societies' subscription in 1965 was £3 a year. This year it is £1080. Now the outbreak of a price war between the two main doctors' defence organisations, the Medical Defence Union and the Medical Protection Society, looks set to bring the issue of the escalating cost of paying for doctors' mistakes to a head. The government has turned down the BMA's proposal for a no fault compensation pilot scheme and shows no signs of agreeing to refer the issue to a select committee, which has also been urged by the BMA.

Talks among the BMA, the defence bodies, and the Department of Health have been going on for some time, but the Medical Protection Society's move in introducing differential subscriptions from next April—spurred by the entry into the market of commercial insurers offering lower rates for general practitioners and other lower risk doctors (22 October, p 1001)—will force the problem further up the agenda. The Medical Defence Union's decision to retain a flat rate subscription, increased by only 25% to £1350 from next January, must raise concern about its ability to meet projected claims, though the union says this was the "lowest prudent single rate" its actuaries advised it could charge.

The Medical Protection Society claims its proposed new rates—around £1000 for general practitioners and low risk hospital doctors, £1800 for high risk hospital doctors and surgeons, such as anaesthetists and orthopaedic surgeons, and £4000 to £5000 for obstetricians—"accord with its actuarial and other professional advice." The new rates will take effect next April unless the government steps in. As one possible solution the society is calling for a no fault scheme for brain damaged babies, who account for 40%-50% of the money paid in compensation.

At present, general practitioners have their subscriptions fully refunded in arrears, through their expenses, though they still have to find the money at first. Hospital doctors working full time for the National Health Service have two thirds of their subscriptions paid by the government under an agreement which runs until December 1989.

The BMA has warned that differential rates would have a "disastrous" effect on recruitment to high risk specialties and increase pressures for differential salaries, which the profession has always opposed. One solution would be for subscriptions for hospital doctors to be reimbursed in full less

a small amount for advice and help unrelated to negligence claims which the defence bodies provide. The Medical Protection Society would like to see the government reimburse full rate subscriptions for junior doctors, reflecting their higher incidence of mistakes. At present, says the society, concessionary rates for juniors reduce the value of a full rate subscription by 22.5%, which means that senior doctors are subsidising juniors.

But the government may well conclude that it would be cheaper and simpler in the long run to introduce crown indemnity for doctors employed by the National Health Service, with health authorities taking over liability from individual doctors. The government already bears much of the cost of the present system. In 1988 it paid some £60m towards doctors' defence subscriptions, while compensation, legal, and administrative costs totalled an estimated £15m for health authorities and £60m for the defence societies, according to a paper from the King's Fund Institute and the Centre for Sociolegal Studies, Oxford.¹

The profession is against crown indemnity. The fear is that health authorities will settle cases on grounds of expediency, disregarding the interests of the individual doctor. The suggestion has been made that cases such as Sidaway, when the House of Lords decided that a neurosurgeon was not negligent in failing to warn of a less than 1% risk of paralysis, and Wilsher, in which the law lords ordered a retrial on the issue of causation, might have been settled rather than fought if a health authority had been controlling the litigation.

But plaintiffs' solicitors will testify that health authorities, which now handle litigation concerning nurses and other non-medical staff, will fight cases as readily as defence societies. The case of Keith Blackburn, who received compensation 12 years after he suffered brain damage from a blocked tracheostomy tube, was one of negligent nursing care strongly defended by health authority solicitors.

A further fear with crown indemnity is that the employing authority will bring pressure to bear on doctors' clinical judgment. The other side of the coin is that it could pave the way for a proper system of medical audit and risk management—so that fewer mistakes are made.

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