

HENRYK CIOCZEK¹, PIOTR KSIĄŻEK², WOJCIECH ZAŁUSKA³**Problemy amerykańskiej medycyny; prawnicy zajmujący się błędami w sztuce lekarskiej, system służby zdrowia nastawiony na zysk oraz medycyna w defensywie****Between greedy malpractice lawyers, profit oriented healthcare insurance providers and defensive medicine****Streszczenie**

W Stanach Zjednoczonych Ameryki Północnej, kraju należącym do najbardziej rozwiniętych na świecie, przeznaczają się największe środki na służbę zdrowia. Jednakże powszechnie wiadomym w opinii publicznej jest fakt, że amerykański system służby zdrowia, oferujący najwyższy poziom w obszarze technologii i efektywnego leczenia, przeznaczony jest głównie dla bardzo zamożnych obywateli, posiadających prywatne ubezpieczenia zdrowotne. Najważniejsze przyczyny kryzysu w systemie służby zdrowia w USA związane są z nadmiernie rozbudowanym i wykorzystanym systemem instytucji prawniczych, zajmujących się problemami błędów w sztuce lekarskiej (malpractice), jednostkami leczniczymi funkcjonującymi z nastawieniem na zysk, oraz problemami z uzyskaniem odpowiednich ubezpieczeń zdrowotnych. Problemem w aspekcie działalności parlamentarnej na rzecz służby zdrowia jest fakt, iż w USA prawnicy są absolutnie dominującą grupą zawodową w Senacie i Kongresie.

Słowa kluczowe: Stany Zjednoczone, system służby zdrowia, błędy w sztuce lekarskiej.

Summary

The United States of America is the highly developed country which is spending the highest amount of money for a health care in the world. However, this is a well proved fact that the American health care system, offering the best medical technology and treatments, works only for the very rich patients with a good, private healthcare insurance. The most important are factors causing this national crisis – malfunctioning malpractice legal system with an overflow of frivolous lawsuits, greedy trial lawyers, profit oriented hospitals, and healthcare insurance providers, lawyer dominated Congress and a widespread practice of defensive medicine.

Key words: United States of America, health care system, medical mistakes.

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WHY THERE WILL BE NO NATIONAL HEALTH CARE SYSTEM IN USA IN OUR LIFETIME

United States is the only highly developed country in the world which does not have a universal, national health care system. At the same time, it is a country which is spending the highest amount of USD per capita for a health care in the world. In spite of this very expensive system, the US results at the bottom of the list among highly developed countries in health care services such as primary care medicine, preventive medicine, prenatal care or national mortality. The undisputed fact is that for very wealthy patients, from USA and from abroad alike, the American health care system is the best in the world, offering the best medical technology and treatments and the best trained doctors in the world. This is a well proved fact; however the system works only for the very rich patients with a good, private health care insurance. 17% of GNP (Gross National Product) in the US is spent for a health care, which is the highest dollar amount in the world, yet at the same time the quality of the care for an average American is very poor and over 45 million people in the US remain uninsured (again about 17% of population).

WHY AMERICA IS SPENDING SO MUCH ON HEALTH CARE AND IS GETTING SO LITTLE FOR ITS CITIZENS?

There are many different factors causing this national crisis. The few most important are – malfunctioning malpractice legal system with an overflow of frivolous lawsuits, greedy trial lawyers, profit oriented hospitals, and health care insurance providers, lawyer dominated Congress and a widespread practice of defensive medicine.

Even the young doctors in training, interns and residents of American hospitals learn about the practice of the very costly, defensive medicine. The general rule of the interns is to “cover your own behind”, as it is said in the resident’s jargon. The idea is to be totally prepared in case of a possible lawsuit, so that no one would ask, “Well, why didn’t you try different, better, more satisfying methods of diagnosis and treatment?” The fear of malpractice lawsuit is the reason that patient’s blood would be taken twice a day, a chest x-ray every day with no medical indications, or the multitude of invasive tests and procedures would be performed even for a mild disease, minor symptoms or an accident. It is also the reason that the CT scans, MRIs and endoscopies would be performed on a ninety year old, demented patient with the last stage of AIDS or with a terminal cancer, just to avoid trivial lawsuits; to avoid blame if something out of one’s hands is to go wrong. The term for this practice is called –“defensive medicine”. For a doctor it is very easy to become a victim of malpractice lawsuit. In America, it is customary (and the custom is generally supported by lawyers in their everywhere present adds) that if a patient or the patient’s family are unhappy with their doctor or have any doubt as to the effectiveness and quality of the care given, they should immediately try to sue the doctor – because there is so much to gain (financially) and nothing to lose. Even if the lawsuit is proved to be frivolous by the court, there is no financial penalty for the lawyer or the patient, and they don’t even

have to pay a cent for the cost of their trial. The amount of the money that could be won by the patient (40% of the USD goes to the lawyer’s pocket) is practically unlimited and it often reaches 10’s of millions. No wonder the United States is the leading country in the world in malpractice lawsuits. Every doctor knows that even though the United States is home to only less than 5% of the world’s population; it is at the same time the home to over 40% of the world’s population of lawyers. Doctors are an easy prey –they are financially stable, and thus have something to save for. They handle life and death situations, and thus are at the high risks. They are humans, so there is always a chance that yes indeed, they may perform an error.

Currently, in USA no true medical error is really needed to start a very long and costly malpractice lawsuit that is very upsetting to the doctors and most of the time to the patient as well. Any complications, any imperfect outcome of the medical treatment, delivery or surgery is a “good” enough reason for an unhappy patient or his family to get a lawyer and to start a lawsuit. As we all know, there is no 100% of perfect outcome in any medical treatment and this is a medium for greedy American lawyers. Such complications such as a wound infection, adverse drug reaction, post-operative bleeding or hematoma, post-operative hernia recurrence, postoperative incision hernia or any complication during delivery is a perfect scenario for a lawsuit. Two most important factors is starting a suit is minor imperfect outcome in treatment and unhappy patient willing to sue his doctor. As for the lawyers, they are risking only their time and “pecunia non olet”, so they are willing to take any frivolous lawsuit. The competition among the thousands of trial lawyers is very high.

Frequent and frivolous lawsuits continue to drive physicians and hospital to defensive medicine practices. The Massachusetts Medical Society conducted the study in 2008 to investigate the influence of the malpractice lawsuit on the practice of the defensive medicine. Among 900 surveyed doctors in eight different specialties in Massachusetts, 39% have reduced high-risk medical services or procedures for fear of being sued. That rate is especially high for surgeons particularly orthopedic surgeons and for obstetrician-gynecologists. 83% of the 900 surveyed doctors said they practice defensive medicine such as ordering additional and often unnecessary medical tests, procedures, hospitalizations or referrals – all to avoid liability risks. Those sentiments were echoed by physicians across the country in a survey released in November 2008 by Physicians Foundation, in which doctors ranked medical liability and defensive medicine very high on their list of practice pressures. The findings of both surveys came as physicians look for solutions to reduce medical liability, insurance premiums that have hit some of the highest levels in the USA in recent years. Doctors of some specialties like orthopedic surgery, neurosurgery or OB-GYN have medical malpractice insurance premiums often reaching astounding 200, 000 USD per year.

The American Medical Association actively continues to advocate for medical liability reform at the national level. AMA confirms that defensive medicine is a unfortunate outgrowth of the broken liability system in the United States, which is in need for a change in order to preserve patient’s access to care and keep physicians practicing medicine.

WHY PRESIDENT BARACK OBAMA WON'T SUCCEED IN INTRODUCING EFFECTIVE NATIONAL HEALTH CARE SYSTEM IN USA?

President Barack Obama made a public promise during his campaign to establish an affordable, universal health care plan for all Americans. Health care reform is the holy grail of all democratic presidents. Truman, Johnson, Carter and Clinton all set out to find consensus to provide every American with health insurance coverage, only to end up empty handed. Now the time has come for President Barack Obama. There are many good reasons why new President will fail in his promise. One of the most important slogans in Barack Obama's presidential campaign and new administration is the world change.

PRESIDENT WANTS A CHANGE

President thinks the time is right for change in a dysfunctional health care system in the United States. There are many good reasons why Barack Obama could succeed in a country with abnormal legal system, but not in abnormal malpractice legal system we have in America. Just four days before the election, senator Obama listed health care system as his third priority, behind fixing the financial mess and creating jobs. He stated: "I think the time is right."

A former Secretary of Health and Human Services-Tom Daschel and a former Senate Majority leader, before he was released from his position for not paying taxes, also wants a change. He is also saying that the time is just right for a major health reform in the country. Tom Daschel formally began a quest of present administration to change the nation's expensive and not efficient health care system. The task of changing the system had become even more agent because many people are losing health insurance along with their jobs during the recession. Secretary Daschel spoke with passion about the hardship he had witnessed among the people without insurance, who often face a total economic destruction, lost their houses and lifetime savings if they became seriously ill required prolonged hospitalization, while not having an active health insurance. Very often these are the stories of personal bankruptcy caused by the illness and lack of insurance.

Secretary of health predicted that during a prolonged depression, the problem of a growing group of 45 million of uninsured is likely to grow even more. Secretary of health made a promise to act very quickly and efficiently to help those individuals in a difficult situation. So we can see that the former Secretary Tom Daschel really wants a change and certainly has plenty of good intentions, but we have to remember that as one lawyer said "the road to hell is paved with good intentions..."

VOTERS WANT A CHANGE (FOR SURE)

Survey conducted two months prior the election showed that over 80% of voters said health care needs a fundamental reform or should be completely rebuilt. This finding was consistent across all income brackets and regions of the country. The polls show, that Americans want health care reform more than any other major public policy issue, with the percent of people saying that they want a radical change to the health care system at one of the highest levels since 1992.

CONGRESS WANTS A CHANGE (REALLY?)

Some congressional Democrats are committed to comprehensive health care reform. There are some good papers on Health care presented in Congress. One of them presents a vision for comprehensive health care reform including an affordable coverage for every American and comprehensive reforms to support primary care – the key stance of a high performing health care system.

In spite of these efforts we have to remember that a change of the health care system is not good for thousands of malpractice lawyers who are strong financial supporters of the politicians. We also have to remember that malpractice insurance companies and health care insurance provider companies top positions are also supported by lawyers, who make a very nice profit. Over 90% of the US Congressmen and Senators are also the lawyers. We can only ask are they (the lawyers) going to cut a branch they are sitting on? It is hard to believe it.

"Pecunia non olet", no lawyer is going to hurt another lawyer that is why there will be no national health care system reform in USA during Barack Obama's presidency and during our lifetime.

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