

Will care be there?

Is the question still relevant 10 years later?

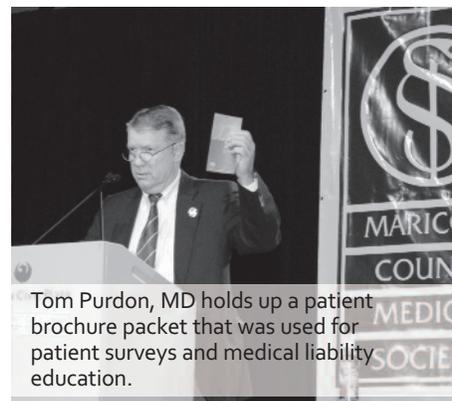
Miriam K. Anand, MD

“Will care be there?”

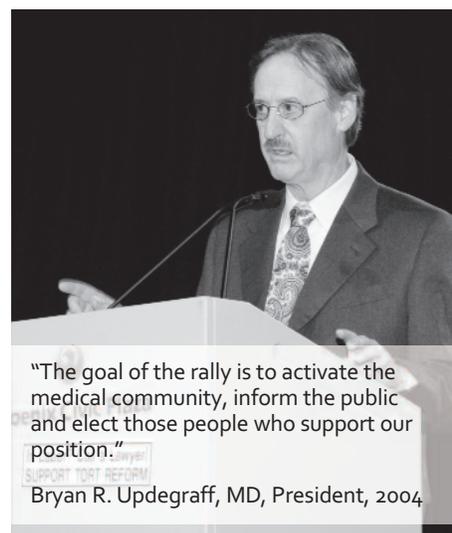
That was the question being asked by physicians across the state of Arizona 10 years ago at the Medical Liability Insurance Crisis Rally on October 21, 2004 (photos to the right). The rally was hosted by the Maricopa County Medical Society (MCMS), at the direction of then president, Bryan Updegraff, MD, and was co-sponsored by the Arizona Medical Association (ArMA).

The goals were to a) alert practitioners and the public to the liability crisis and the threat to healthcare, b) effect the 2004 election to elect candidates at the state and federal level who understood the medical liability issue and pledged to fix it, and c) garner support from physicians around the state. The event was attended by c. 2,400 physicians and stimulated my personal interest to become more involved in organized medicine and its effort to protect our profession.

Many may remember the rally, but I wonder how many have followed the outcomes from the calls to action made there over the past decade. At the time, there was a call to put a cap on non-economic damages (pain and suffering) at the state or federal level based on the success of such caps in states such as California. The Arizona State Constitution prohibits setting a cap on non-economic damages and the federal measure failed. Despite this, significant steps have been accomplished at the state level to reduce frivolous lawsuits and make the process more fair to physician defendants. For example, plaintiffs now require an “affidavit of merit” in order for the case to be eligible to be heard in court. This has raised the bar and has made it more difficult for non-meritorious cases to be brought against physicians. Furthermore, clear and convincing evidence is now required in cases involving emergency care rather than a “preponderance of evidence,” which was the old standard. Finally, testimony by expert witnesses must now be held to the higher Daubert standards versus



Tom Purdon, MD holds up a patient brochure packet that was used for patient surveys and medical liability education.



“The goal of the rally is to activate the medical community, inform the public and elect those people who support our position.”
Bryan R. Updegraff, MD, President, 2004



The entire panel stands and joins hands to show unity. Drs. Tom Purdon, Phil Keen and Brian Updegraff are shown.



Physicians sign in for the event.

the less stringent Frye standards that were previously acceptable. The Daubert decision establishes criteria to evaluate whether top-rated witnesses are using validated, peer-reviewed scientific information versus so-called “junk science” or personal opinion in their testimony.

Dr. Updegraff’s call to action, therefore, has continued to have a slow but sure positive impact on reducing the risk of frivolous medical liability claims in Arizona. Each of the achievements above, however, represents hard fought victories on behalf of ArMA with the support of the MCMS. If you have not followed these advances over the years, you have surely noticed that your liability premiums have come down and, if you are insured by the Mutual Insurance Company of Arizona (MICA), you have even received dividends back over the past few years. If you are not aware of this, I would urge you to compare rates from 2004 to those today, even if your employer pays for your liability insurance. Still, despite the fact that these savings would likely pay for MCMS and ArMA dues many times over, many are choosing not to become members or are letting their membership lapse. I saw an interesting quote recently: “Some quit due to slow progress, never grasping the fact that slow progress is progress.” It seems that those who ask what membership does for them are not paying attention to progress that is made, perhaps because it doesn’t meet the need of instant gratification we have all become used to.

Given the advances that organized medicine in Arizona was able to achieve above, is the question “Will care be there?” still relevant today? While requiring an affidavit of merit,

Dear Readers,

The announcement that the University of Arizona Health Network (UAHN) and Banner Health are in negotiations regarding a potential 30 year agreement came out after the submission of my last editorial.

The UAHN is a private entity which owns the University of Arizona Medical Center in Tucson and a number of other U of A affiliated medical sites, whereas the University of Arizona runs the medical college campuses in Phoenix and Tucson. Banner Health runs the largest not-for-profit hospital system in the state.

The agreement, which ultimately needs to be approved by the Board of Regents, is expected to include a 30 year collaboration and affiliation in which Banner would provide considerable financial support to both college campuses. Banner would purchase the land associated with the University Medical Center in Tucson. In addition, Banner Good Samaritan Medical center would be converted to a faculty-based academic medical center.

Some speculate that this could represent the early stages of what the future could hold for other state academic medical centers that are struggling financially in the current climate.

What are your thoughts on this potential merger? Email your comments to manand@mcmsonline.com.

Miriam K. Anand, MD
President

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Excerpts from a few of the featured speakers at the Medical Liability Insurance Crisis Rally on October 21, 2004

"People ask me what the heck does the Medical Society do for me? Tonight's meeting is exemplary of the Medical Society. We care about every physician in the county and state and the provisions of the healthcare of our patients."

– Marc J. Rosen, MD, MCMS 2005 President

"You cannot answer the question, is this system better than one of reform? You have to acknowledge that it needs to be reformed. This is work worth doing, so let's get to it!"

– Senator Jon Kyl

"You need to make it a grassroots effort. You have to organize and get physicians around the state to participate."

– Peter Bernardo, MD

clear and convincing evidence, or holding expert witness testimony to a higher standard would seem logical to most readers, others would argue that it makes it more difficult for patients who may have a legitimate claim to pursue it and be properly compensated. The use of the Daubert standard was already challenged by an appeal, but was ultimately upheld by the Arizona Supreme Court. The November ballot in California will include a measure to raise the cap on non-economic damages from \$250,000 to \$1.1 million. There will always be those on the other side that will look for opportunities to overturn or get around advances that are made in reducing frivolous liability claims.

We face numerous other challenges that affect our ability to care for our patients, some of which are due to laws passed by state and federal legislators. While everyone is aware of the Affordable Care Act, surely the most sweeping legislation to affect our profession in decades, many may not be aware of numerous bills proposed each year that could impact us and how we provide care. They may also be unaware of the efforts of your local organizations to fight those that can be detrimental.

The issue of physician burnout is well known and is a reason that many physicians choose to retire earlier than they might have otherwise. Physicians are also choosing to move to non-clinical positions or seek other careers altogether. In the meantime, funding for Graduate Medical Education is already inadequate and President Obama's

2015 budget proposal would reportedly cut it even further. This could translate into fewer continuing education options to provide trained physicians. More nurse practitioners and physician assistants are being used to fill the vacancies and, while many of them provide excellent care, their training requires much less clinical exposure than that for physicians. Furthermore, those in other professions, such as naturopaths and chiropractors, are lobbying to be considered primary care providers. This is despite the fact that they also have little to no post-graduate training and would be the equivalent of having MDs and DOs bypass internships and residencies and start practicing right out of medical school. Primary care physicians are responsible for managing chronic medical conditions and must also be familiar with appropriate cancer and disease screening. Most of us required three years of post-graduate training to be considered eligible to provide this care. To cite a quote I saw recently on the issue of the disparity in clinical training, "you don't know what you don't know."

Physicians have less and less time to spend with patients. Legal and legislative changes, such as the ACA and meaningful use, have not only failed to change this fact, but in many ways have worsened the issue. Perhaps the question for 2014 is not whether or not care will be there, but will quality care be there?

The answer to this question remains to be seen. Your membership in organizations such as MCMS and ArMA, however, indicates your dedication to ensuring that quality care will be there. You likely have colleagues who believe in the MCMS mission of promoting excellence in the quality of care, the health of the community, and the importance of a strong and collective physician voice. Despite this, they are not members. Please help them to understand that our strength lies in our membership and the more members we have, the more powerful we become. 



Dr. Miriam Anand is an Allergy and Immunology specialist practicing in Tempe. She is the Maricopa County Medical Society's 120th President, and has been a MCMS member since 1998.

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