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AN EMPIRICAL ANALYSIS OF THE MEDICAL AND LEGAL PROFESSIONS' EXPERIENCES AND PERCEPTIONS OF MEDICAL AND LEGAL MALPRACTICE

J. Douglas Peters,* Steven K. Nord,** and R. Donald Woodson***

Medical malpractice is increasingly a legislative concern at both the federal and state levels.¹ It is foreseeable that legal malpractice will appear as a legislative concern in the near future. Because of this and the public's interest in both professions, this comparative empirical analysis was designed to assist legislators and their public in grappling with these complex issues. It should also help doctors and lawyers better understand themselves and their counterparts.

Although the threat of malpractice is not new to either profession, it has reached significant proportions for the legal profession much more recently than for the medical profession.² De-

² See Mallen, Legal Malpractice: The Legacy of the 1970s, 16 FORUM 119 (1980) (the number of published appellate decisions of legal malpractice cases increased fourfold in the 1970's as compared to the 1960's); Somers, The Malpractice Controversy and the Quality of Patient Care, 55 MILBANK MEMORIAL FUND Q.—HEALTH & SOC'Y 193, 194
spite the longevity of the medical malpractice crisis and years of legislative treatment, the trend continues toward increasing numbers of such claims.\textsuperscript{3} The increasing number of medical malpractice claims has, in many instances, resulted in reactive legislation, a breakdown of professional relations between doctors and lawyers, and a cynicism toward the legal system and the role of the legal profession.\textsuperscript{4} Although the primary purpose of this study is to evaluate the experiences and perceptions of doctors and lawyers from two major American cities about malpractice in each of their professions, legislators seeking solutions to real or perceived problems will hopefully find utility in the study's findings.

I. RESEARCH QUESTIONS

Some of the questions this study addresses are: (1) Do doctors and lawyers admit to committing malpractice? (2) Do they tell their patients and clients when they commit malpractice? (3) What experiences are common to both the medical and legal professions with respect to professional malpractice? (4) Do doctors' and lawyers' experiences and perceptions differ between cities? (5) Are the experiences, perceptions, and responses of professionals who have been sued for malpractice similar to those of professionals who have not been sued? and (6) How do doctors and lawyers want to be judged if charged with malpractice?

II. METHODOLOGY

A questionnaire composed of 31 questions (see appendix) was sent to 1,660 professionals—approximately 20% of the legal and

\textsuperscript{3} See generally Chapman, Is Another Crisis Looming?, Nat'l L.J., Feb. 4, 1980, at 34, col. 1; Danzon, The Frequency and Severity of Medical Malpractice Claims, 27 J.L. & Econ. 115 (1984); Senate Told MDs Forced to Practice Defensive Medicine, Ob.Gyn. News, Sept. 1-14, 1984, at 1, col. 3 [hereinafter cited as Defensive Medicine].

medical communities in the metropolitan areas of Detroit, Michigan and Columbus, Ohio.\(^5\)

The questionnaire was reviewed by a number of medical and legal experts for comprehensiveness and clarity. It was then pre-tested to sharpen the questions to avoid ambiguous responses. It was designed to be profession-neutral. In other words, doctors receiving the questionnaire would assume it was probing their experiences and perceptions about medical malpractice and lawyers receiving the questionnaire would assume it was probing their perceptions about legal malpractice. To further enhance the profession-neutrality of the questionnaire, each respondent received the questionnaire with a cover letter signed by the senior author, who holds faculty positions at both a law school and a medical school. The letter to the doctors was on medical school stationery and the letter to the lawyers was on law school stationery.

The cover letters advised all respondents that their answers would be kept confidential. Each questionnaire was coded in the lower left hand corner, however, so that it could be separated by profession and by city. To facilitate responses, each questionnaire was accompanied by a self-addressed stamped envelope returnable to Wayne State University Medical School for the doctors and to the University of Toledo Law School for the lawyers. Names and addresses were selected randomly from the telephone books of the respective cities. The sample was taken from phone books to include doctor and lawyer practitioners, and to exclude judges and corporate captive or retired doctors and lawyers generally not available to public consumers.

Three hundred eighty questionnaires were mailed to Detroit doctors and 230 questionnaires were mailed to Columbus doctors. One hundred sixty-four responses (43\%) were received from Detroit doctors and eighty-nine responses (39\%) were received from Columbus doctors. Six hundred twenty-five questionnaires were mailed to Detroit lawyers and 425 questionnaires were mailed to Columbus lawyers. Two hundred thirty-four Detroit lawyers (37\%) responded and 174 Columbus lawyers (41\%) responded. The 661 responses constituted a 40\% response rate from the sample, or 8\% of the total doctor and lawyer populations from the two cities studied.

Responses were entered on data sheets and then transferred to a computer data base to facilitate analysis and correlation.

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5. The questionnaires were mailed in May 1984. Responses returned after August 1984 were not counted.
The returned questionnaires, the raw data sheets, and the computer stored data have been retained.

III. RESULTS

The results presented below are divided into: (A) demographic findings; (B) malpractice and malpractice suit experience; (C) perceived risks of being sued for malpractice; (D) professional effects of being sued for malpractice; and (E) the professions’ perceptions of dispute resolution options. In general, the results indicate that doctors and lawyers face similar problems when confronted with a malpractice suit. Consequently, any legislative action addressing the medical malpractice crisis should also address the problems created by the impending legal malpractice crisis.

A. Demographic Findings

Of the 661 responses, approximately 90% came from males. This male-female ratio is consistent for all four surveyed groups and is fairly reflective of the percentages of males and females in practice. The breakdown in ages of professionals who responded is also fairly consistent between the professions. Although only 2% of both groups of doctors indicate they are younger than thirty years old—as compared to 10% of Detroit lawyers and 13% of Columbus lawyers—the remaining responses are evenly distributed among the four age groups between 30 and over-60. With respect to the ages of those who have been sued for malpractice, the highest percentage of each group—except Columbus lawyers—indicate they are in the 41-50 age bracket. Thirty percent of Detroit lawyers and doctors and 34% of Columbus lawyers who have been sued indicate they fall within the 41-50 age bracket. The highest percentage of Columbus lawyers who have been sued (38%) respond that they are in the 31-40 age bracket. Overall, the professionals who have been

6. In 1984, 16.2% of all lawyers and judges were female, and 16.0% of doctors were female. STATISTICAL ABSTRACT OF THE UNITED STATES 402 (106th ed. 1986). The sampling technique used excluded judges and female doctors and lawyers employed as corporate captives. This is one of the reasons for the difference between the percentage of females responding and their percentage representation in the general population of doctors and lawyers.
7. See question 22 in the appendix.
sued are represented in every age group except for the under-30 group.

When asked to indicate their practice experience, 37% of the total respondents, and the largest percentage from each group, reply that they have been in practice 6-15 years. The remaining respondents are evenly divided between brackets ranging from 0-5 years to over 35 years in practice. When plotted, these results form a pure bell curve. The responses of those sued for malpractice are similar to the responses of their respective groups as a whole, except that a clear majority of those sued for malpractice fall within the two subdivisions that encompass 6-25 years in practice. Table I compares the years of experience of professionals who have been sued with those who have not been sued.

| TABLE I |
| PROFESSIONAL EXPERIENCE¹ |

<table>
<thead>
<tr>
<th>Years In Practice</th>
<th>Detroit Lawyer</th>
<th>Columbus Lawyer</th>
<th>Detroit Doctor</th>
<th>Columbus Doctor</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Not Sued (%)</td>
<td>Sued (%)</td>
<td>Not Sued (%)</td>
<td>Sued (%)</td>
</tr>
<tr>
<td>0 - 5</td>
<td>(23) (4)</td>
<td></td>
<td>(21) (6)</td>
<td></td>
</tr>
<tr>
<td>6 - 15</td>
<td>(40) (30)</td>
<td>(46) (38)</td>
<td>(29) (37)</td>
<td>(27) (27)</td>
</tr>
<tr>
<td>16 - 25</td>
<td>(17) (32)</td>
<td>(12) (28)</td>
<td>(17) (22)</td>
<td>(20) (20)</td>
</tr>
<tr>
<td>Over 35</td>
<td>(6) (15)</td>
<td>(14) (9)</td>
<td>(15) (16)</td>
<td>(18) (18)</td>
</tr>
<tr>
<td>No Response</td>
<td>(1) (0)</td>
<td>(1) (0)</td>
<td>(1) (0)</td>
<td>(0) (0)</td>
</tr>
<tr>
<td>Total</td>
<td>(100) (100)</td>
<td>(100) (100)</td>
<td>(100) (100)</td>
<td>(100) (100)</td>
</tr>
</tbody>
</table>

1. The percentages are derived from survey questions 23 and 27.

Table II compares the income distribution of those who have been sued with those who have not been sued. The responses indicate that professionals who have been sued are more likely to have higher incomes. In addition, higher income correlates with the age findings. The older professional may have greater professional responsibilities that carry both increased income and risk. The increased risk, however, may also be the result of unattended skills or outdated knowledge.

8. See question 23 in the appendix.
<table>
<thead>
<tr>
<th>Amount of Income</th>
<th>Detroit Lawyer</th>
<th>Columbus Lawyer</th>
<th>Detroit Doctor</th>
<th>Columbus Doctor</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Total No. (%)</td>
<td>*NS (%)</td>
<td>**S (%)</td>
<td>Total No. (%)</td>
</tr>
<tr>
<td>Under $25,000</td>
<td>27 (12)</td>
<td>(13)</td>
<td>(7)</td>
<td>18 (10)</td>
</tr>
<tr>
<td>$25,000-$50,000</td>
<td>81 (35)</td>
<td>(39)</td>
<td>(19)</td>
<td>66 (38)</td>
</tr>
<tr>
<td>$50,000-$100,000</td>
<td>74 (32)</td>
<td>(27)</td>
<td>(51)</td>
<td>59 (34)</td>
</tr>
<tr>
<td>Over $100,000</td>
<td>45 (19)</td>
<td>(19)</td>
<td>(21)</td>
<td>24 (14)</td>
</tr>
<tr>
<td>No Response</td>
<td>7 (2)</td>
<td>(2)</td>
<td>(2)</td>
<td>7 (4)</td>
</tr>
<tr>
<td>TOTAL</td>
<td>234 (100)</td>
<td>(100)</td>
<td>(100)</td>
<td>174 (100)</td>
</tr>
</tbody>
</table>

*NS - Indicates professionals who have not been sued  
**S - Indicates professionals who have been sued  
1. Derived from survey questions 26 and 27.
The professionals' types of practice were studied next.³ Thirty-three percent of both groups of lawyers report that they are engaged in solo practice, while 59% of Detroit doctors and 45% of Columbus doctors are engaged in solo practice. The remainder of the respondents indicate that they are engaged in a group practice—except for 7% of Columbus doctors and 4% of Detroit doctors and Columbus lawyers who are engaged in an institutional-type practice. Institutional professionals may be underrepresented due to the sampling technique employed. With respect to the type of practice, the responses of professionals who have been sued are the same as those who have not been sued.

A final demographic question asked the respondents to indicate the amount of their malpractice insurance coverage.⁴ This question was asked because the amount or absence of insurance may be considered a professional's response to the perceived threat of malpractice. The majority of each group (except Detroit doctors) indicate that they have at least $500,000 of malpractice insurance coverage. Thirty-eight percent of Detroit doctors indicate that they have $300,000 of malpractice insurance coverage, and only 37% indicate that they have $500,000 of coverage. Percentages are consistent between the sued and unsued. Malpractice insurance is further discussed in section C.⁵

In sum, the 661 questionnaire responses represent professionals from all age groups, experience levels, types of practice, and income levels. This diversity is present throughout the responses of each of the groups and subgroups and is consistent in both professions, thus providing for a good survey sample.

B. Respondents' Malpractice Suit Experience

Individual respondents were asked about their experiences with professional malpractice. The threshold question asked respondents if they have ever been sued for professional malpractice.⁶ Nearly 36% of the total number of respondents answered affirmatively.

There is a substantial difference in the percentage of doctors and lawyers who have been sued. Detroit doctors, as a group,

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9. See question 24 in the appendix.
10. See question 25 in the appendix.
11. See infra text accompanying note 20.
12. See question 27 in the appendix.
have the highest percentage—68% of the respondents were sued for malpractice. The 49% of Columbus doctors sued represent the second highest group. There is a large gap between the two groups of doctors and the two groups of lawyers, with only 20% of Detroit lawyers and 18% of Columbus lawyers responding that they have been sued for malpractice. Table III presents the raw and percentage data:

**TABLE III**

<table>
<thead>
<tr>
<th>NUMBER OF MALPRACTICE SUITS1</th>
<th>Detroit Lawyer</th>
<th>Columbus Lawyer</th>
<th>Detroit Doctor</th>
<th>Columbus Doctor</th>
</tr>
</thead>
<tbody>
<tr>
<td>No. (%)</td>
<td>No. (%)</td>
<td>No. (%)</td>
<td>No. (%)</td>
<td>No. (%)</td>
</tr>
<tr>
<td>Number Sued:</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>(a) Once</td>
<td>38 (16)</td>
<td>25 (14)</td>
<td>45 (27)</td>
<td>26 (29)</td>
</tr>
<tr>
<td>(b) More Than Once</td>
<td>9 (4)</td>
<td>7 (4)</td>
<td>67 (41)</td>
<td>18 (20)</td>
</tr>
<tr>
<td>(c) Total Sued</td>
<td>47 (20)</td>
<td>32 (18)</td>
<td>112 (68)</td>
<td>44 (49)</td>
</tr>
<tr>
<td>Never Sued:</td>
<td>187 (80)</td>
<td>137 (79)</td>
<td>52 (32)</td>
<td>45 (51)</td>
</tr>
<tr>
<td>TOTAL</td>
<td>234 (100)</td>
<td>169* (97)</td>
<td>164 (100)</td>
<td>89 (100)</td>
</tr>
</tbody>
</table>

* Five Columbus lawyers who responded to the survey did not respond to this question.
1. Derived from survey question 27.

The data indicate that of lawyers who have been sued, the large majority—81% of Detroit lawyers and 78% of Columbus lawyers—have been sued only once. In contrast, 60% of Detroit doctors and 41% of Columbus doctors have been sued more than once.

The difference between the professions regarding the incidence of malpractice suits extends to the payment of damages either through settlement or court decision. In response to a question concerning the payment of damages,13 36% of defendant Detroit doctors paid damages, compared to only 22% of defendant Detroit lawyers. Surprisingly, of those who have been sued for malpractice, only 45% of Detroit lawyers and Columbus doctors, 41% of Columbus lawyers, and 53% of Detroit doctors indicate that they, or someone on their behalf, paid damages as the result of a malpractice suit. Because some respondents had suits in progress, the percentage paying damages is probably higher than the reported percentages indicate. Unlike the earlier question regarding the number of suits, this question does not

13. See question 28 in the appendix.
differentiate between whether damages have been paid as a result of one malpractice suit or more than one malpractice suit. Therefore, these percentages reflect damages paid by the respondents or their insurance companies as a result of at least one malpractice suit.

A final area of inquiry asked respondents whether they have deviated from their profession's standard of care in the past five years, causing injury to a client (or patient) for which no claim was filed. Nineteen percent of Detroit lawyers and 16% of Columbus lawyers admit that they have committed such a deviation (see table IV):

**TABLE IV**

DEVIATIONS FROM STANDARDS OF CARE: NO SUIT FILED

<table>
<thead>
<tr>
<th>Type of Practitioner</th>
<th>Personal Deviation¹</th>
<th>Competent Colleague's Deviation²</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Total No. (%) NS (%) S (%)</td>
<td>Total No. (%) NS (%) S (%)</td>
</tr>
<tr>
<td>Detroit Lawyer</td>
<td>44 (19) (19) (17)</td>
<td>121 (52) (53) (47)</td>
</tr>
<tr>
<td>Columbus Lawyer</td>
<td>28 (16) (18) (13)</td>
<td>86 (49) (47) (59)</td>
</tr>
<tr>
<td>Detroit Doctor</td>
<td>14 (9) (6) (10)</td>
<td>45 (27) (33) (25)</td>
</tr>
<tr>
<td>Columbus Doctor</td>
<td>10 (11) (9) (14)</td>
<td>36 (40) (38) (43)</td>
</tr>
<tr>
<td>Total Respondents</td>
<td>96 (15) (16) (12)</td>
<td>288 (44) (47) (37)</td>
</tr>
</tbody>
</table>

1. Derived from survey question 29.
2. Derived from survey question 30.

Only 11% of Columbus doctors and less than 9% of Detroit doctors admit that they have committed such deviations. Whether these figures show denial or good practice by the doctors, and poorer performance by both groups of lawyers, will require further study. Both professions, however, are probably underreporting the actual number of errors causing injury. Although there is no direct evidence that this is in fact the situation, human nature would dictate that individuals repress or rationalize their mistakes. The data in table IV comparing personal as opposed to a colleagues' deviations tends to support this conclusion.

The responses of professionals who have been sued are consistent with the experience of their respective group. Of those sued, 17% of Detroit lawyers, 13% of Columbus lawyers, 14% of Co-
lumbus doctors, and 10% of Detroit doctors respond that they have committed such deviations. Respondents were also asked if they know of a competent colleague's deviation from accepted standards of care within the past five years that resulted in an injury for which no claim was filed. There was a dramatic increase in the affirmative responses to this question. Approximately 50% of both groups of lawyers and 44% of all four responding groups know of such deviations. Table IV demonstrates the differences between personal deviations and knowledge of competent colleagues' deviations, and compares the responses of professionals who have not been sued with the responses of those who have been sued.

Although there are obvious differences between the responses of the two professions regarding deviations from the standards of care for which no suit was filed, an analysis of table IV demonstrates the potential for the malpractice "crisis" to continue its growth in both professions. The data show that malpractice is a problem in the minds of respondents from both professions. Furthermore, the data contained in table IV do not include deviations that the respondents have seen where a suit was filed.

Despite the difference in the percentage of doctors who have been sued as compared to the percentage of lawyers, that lawyers acknowledge such a high percentage of competent colleagues deviating from accepted standards of care without being sued evidences the potential for a dramatic increase in the number of legal malpractice suits—in much the same way that the medical malpractice crisis exploded on the medical profession in the mid-1970's. The legal profession has begun to see growth in the number of malpractice claims brought against members of the profession, even though this growth has not yet been as great as that experienced by the medical profession.

C. Perceived Risks of Being Sued for Malpractice

The second area of inquiry explored the risks perceived by the individual with respect to professional malpractice. The questions exploring malpractice risk concentrated on the perceived risks and concerns of the individual resulting from the threat of a malpractice suit by an injured client or patient.

15. See question 30 in the appendix.
16. See Mallen, supra note 2, at 119; Trends, supra note 2, at 68; Defensive Medicine, supra note 3, at 1, col. 3; Somers, supra note 2, at 193-95.
17. See Somers, supra note 2, at 194; Mallen, supra note 2, at 119.
The first question asked respondents how concerned they are with being sued for malpractice (see table V). Fifty-six percent of Detroit doctors and 24% of Columbus doctors indicate great concern with being sued. This great concern is consistent with the fact that Detroit doctors reported the highest percentage of respondents sued (see table III). Only 16% of Columbus lawyers and 14% of Detroit lawyers, however, indicate great concern with being sued. Approximately 90% of respondents indicate that they have at least a moderate concern with being sued for malpractice. A difference between the two professions is evident from the amount of concern demonstrated by each. Seventy-two percent of Detroit lawyers, 75% of Columbus lawyers, 69% of Columbus doctors, and 38% of Detroit doctors indicate that they have only moderate concern with being sued for malpractice.

The responses of those professionals who have been sued show a greater concern with being sued for malpractice than the responses of their groups as a whole or of those professionals who have not been sued. Table V demonstrates these differences and reveals that even though a smaller percentage of respondents who have been sued indicate that they have a moderate concern with being sued, a larger percentage indicate that they have great concern. It is notable that 65% of the Detroit doctors who have been sued express great concern with being sued again for malpractice. Although sued respondents in all groups express greater concern with another suit than do their unsued counterparts, none of the subgroups approach the concern shown by Detroit doctors.

Respondents' concern with the risk of a malpractice suit is also reflected in their replies to a question that asked: "What do you think will be the trend in the next decade in the number of malpractice claims filed against our profession?" Over 80% of each group—except Columbus doctors—expect an increase in the number of malpractice claims in the next decade. Only six of the 661 respondents predict a decrease in the number of such claims.

Question 31 asked respondents whether they expect to be sued for malpractice sometime within the next ten years. Forty-six percent of the respondents indicate a belief that they will be sued. However, only 29% of Detroit lawyers and 25% of Columbus lawyers who have not been sued believe that they will be sued for malpractice within the next ten years. Consistent with

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18. See question 2 in the appendix.
<table>
<thead>
<tr>
<th>Amount of Concern</th>
<th>Detroit Lawyer</th>
<th>Columbus Lawyer</th>
<th>Detroit Doctor</th>
<th>Columbus Doctor</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Total (%)</td>
<td>NS (%)</td>
<td>S (%)</td>
<td>Total (%)</td>
</tr>
<tr>
<td>No Concern</td>
<td>(14)</td>
<td>(15)</td>
<td>(11)</td>
<td>(9)</td>
</tr>
<tr>
<td>Moderate</td>
<td>(72)</td>
<td>(73)</td>
<td>(66)</td>
<td>(75)</td>
</tr>
<tr>
<td>TOTAL</td>
<td>(100)</td>
<td>(100)</td>
<td>(100)</td>
<td>(100)</td>
</tr>
</tbody>
</table>

1. Derived from survey question 1.
the perceived risk demonstrated by the respondents as a whole, 36% of Columbus doctors and 58% of Detroit doctors who have not been sued believe that they will be sued for malpractice within the next decade.

The responses of professionals who have been sued differ from the responses of those who have not been sued. A large majority of those sued believe that they will be sued again within the next ten years. Of those sued, 55% of Detroit lawyers, 66% of Columbus lawyers, 61% of Columbus doctors, and 81% of Detroit doctors believe that they will be sued again within the next ten years.

Although a majority of respondents indicate that they have not deviated and are not aware of a competent colleague’s deviation from accepted standards of care resulting in injury to a patient or client, a majority nonetheless report that competent professionals do sometimes deviate from accepted standards of care (see table IV). In response to a question asking whether competent professionals sometimes deviate from accepted standards of care, thereby causing injury to their consumers, approximately 90% of each group of lawyers, 78% of Columbus doctors, and 73% of Detroit doctors responded affirmatively. The recognition that even competent professionals sometimes deviate from accepted standards of care tends to validate the professional’s fear of a future malpractice suit. Furthermore, this finding refutes the perception of some that only “incompetent” professionals commit malpractice.

The relationship between malpractice insurance and perceived risk of suit was also probed. Respondents were asked how much malpractice insurance coverage they carry and what they consider to be adequate malpractice insurance coverage. In comparison to the responses previously discussed concerning malpractice experience and malpractice risk, the responses to the insurance questions are most surprising. Although Detroit doctors have been sued more than three times as often as either group of lawyers and 19% more than Columbus doctors, they carry less malpractice insurance and believe a smaller amount of insurance coverage is adequate. Columbus doctors indicate that they carry the next largest amount. Table VI reflects the amount of malpractice insurance carried and the amount of coverage considered adequate by members of each group. The responses

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19. See question 6 in the appendix.
20. See questions 10 and 25 in the appendix.
## TABLE VI

### ACTUAL COVERAGE v. ADEQUATE COVERAGE

<table>
<thead>
<tr>
<th>Amount of Coverage ($)</th>
<th>Detroit Lawyer</th>
<th></th>
<th>Columbus Lawyer</th>
<th></th>
<th>Detroit Doctor</th>
<th></th>
<th>Columbus Doctor</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Actual (%)</td>
<td>Adequate (%)</td>
<td>Actual (%)</td>
<td>Adequate (%)</td>
<td>Actual (%)</td>
<td>Adequate (%)</td>
<td>Actual (%)</td>
<td>Adequate (%)</td>
</tr>
<tr>
<td>-0-</td>
<td>(9)</td>
<td>(4)</td>
<td>(11)</td>
<td>(3)</td>
<td>(4)</td>
<td>(6)</td>
<td>(1)</td>
<td>(1)</td>
</tr>
<tr>
<td>50,000</td>
<td>(1)</td>
<td>(3)</td>
<td>(1)</td>
<td>(2)</td>
<td>(1)</td>
<td>(3)</td>
<td>(0)</td>
<td>(0)</td>
</tr>
<tr>
<td>100,000</td>
<td>(10)</td>
<td>(21)</td>
<td>(6)</td>
<td>(12)</td>
<td>(19)</td>
<td>(17)</td>
<td>(9)</td>
<td>(9)</td>
</tr>
<tr>
<td>300,000</td>
<td>(21)</td>
<td>(15)</td>
<td>(10)</td>
<td>(16)</td>
<td>(38)</td>
<td>(27)</td>
<td>(19)</td>
<td>(12)</td>
</tr>
<tr>
<td>500,000+</td>
<td>(56)</td>
<td>(57)</td>
<td>(70)</td>
<td>(67)</td>
<td>(37)</td>
<td>(46)</td>
<td>(71)</td>
<td>(78)</td>
</tr>
<tr>
<td>No Response</td>
<td>(3)</td>
<td>(0)</td>
<td>(2)</td>
<td>(0)</td>
<td>(1)</td>
<td>(1)</td>
<td>(0)</td>
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<td>(100)</td>
<td>(100)</td>
<td>(100)</td>
<td>(100)</td>
<td>(100)</td>
<td>(100)</td>
</tr>
</tbody>
</table>

1. Derived from survey questions 10 and 25.
reported in table VI are comparable to the responses of those subgroups who have and have not been sued. Apparently, being sued does not prompt the average professional to increase his or her coverage.

In addition to having the largest percentage of their members sued for malpractice (see table III), Detroit doctors express greater concern with being sued for malpractice (see table V) and have the highest percentage believing that they will be sued sometime within the next ten years. Nevertheless, Detroit doctors purchase less insurance coverage than Columbus doctors. The reasons for this inconsistency are not apparent and further study needs to be done to explain the discrepancy. It may be that Detroit doctors carry less coverage because of relatively high premium costs. Alternatively, Detroit doctors may carry less coverage as a “political” statement.

Unlike the differences in experience noted between doctors and lawyers with regard to the number of malpractice suits, parallels may be drawn between the professions with respect to their perceptions and concerns regarding the risk of malpractice. Two things are evident from the responses to the questions concerning risk. First, the vast majority of both professions are concerned with being sued for malpractice, although less than one-half of the respondents actually believe that they will be sued. This latter finding is in sharp contrast to the responses of those professionals who have been sued, with more than 50% of each group indicating their belief that they will be sued again within the next ten years. Second, an overwhelming majority of the members of all four subgroups predict an increase in the number of malpractice claims brought against both professions. This is consistent with recent trends in professional malpractice litigation.\(^{21}\) Finally, the majority of those responding indicate that they carry at least $500,000 of malpractice insurance and that this is adequate.

D. Professional Effects of Being Sued

The third area of inquiry probed the perceived effects of a malpractice suit on the professional practices of those sued. Questions were asked to examine the relationship between the professional and his or her consumer and the effects of a mal-

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\(^{21}\) See Sepler, Professional Malpractice Litigation Crises: Danger or Distortion?, 15 Forum 493 (1980); Chapman, supra note 3, at 34.
practice suit, or the threat of such a suit, on that relationship. Respondents were first asked whether being sued for malpractice would make them consciously more selective in accepting patients and clients. Nearly 80% of both groups of doctors and Detroit lawyers respond that they would be more selective (see table VII). Seventy-three percent of Columbus lawyers agree. Similarly, but more clearly demonstrating an effect on the practice of the professional, nearly 37% of all respondents indicate that they have actually rejected a potential consumer for fear that the person might sue them for malpractice. The percentages are even higher for respondents who have been sued for malpractice.

Once a client or patient has been accepted, 58% of the respondents indicate that the fear of being sued for malpractice has prompted them to engage in procedures and practices beyond those required by the standards of care of their profession, thus resulting in increased costs to patients and clients. As with the percentages reflecting professionals who have rejected potential clients, the percentages of professionals who engage in preventive practices increase once a professional has been sued for malpractice. Because one could argue that “preventive” practices result in improved quality medical and legal services, the threat of a malpractice suit may increase the quality of professional services.

Table VII compares the responses of professionals who have and have not been sued with respondents who indicate that they are consciously more selective, reject potential consumers, and engage in preventive practices. If the 381 respondents who indicate that they engage in preventive practices—resulting in increased costs to the consumer—are believed, one may infer that such practices account for a portion

22. See question 16 in the appendix.
23. See question 11 in the appendix.
24. See question 17 in the appendix.
26. See questions 11, 16, and 17 in the appendix.
<table>
<thead>
<tr>
<th>Type of Practitioner</th>
<th>Consciously More Selective</th>
<th>Rejected Potential Consumer</th>
<th>Preventive Practices</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Total No. (%) (%) (%)</td>
<td>Total No. (%) (%) (%)</td>
<td>Total No. (%) (%) (%)</td>
</tr>
<tr>
<td>Detroit Lawyer</td>
<td>187 (80) (80) (79)</td>
<td>90 (38) (35) (53)</td>
<td>105 (45) (43) (51)</td>
</tr>
<tr>
<td>Columbus Lawyer</td>
<td>127 (73) (73) (75)</td>
<td>61 (35) (30) (63)</td>
<td>92 (53) (52) (59)</td>
</tr>
<tr>
<td>Detroit Doctor</td>
<td>133 (81) (85) (79)</td>
<td>59 (36) (25) (41)</td>
<td>127 (77) (65) (83)</td>
</tr>
<tr>
<td>Columbus Doctor</td>
<td>71 (80) (76) (84)</td>
<td>31 (35) (27) (43)</td>
<td>57 (64) (56) (73)</td>
</tr>
<tr>
<td>Total Respondents</td>
<td>518 (78) (78) (80)</td>
<td>241 (36) (31) (47)</td>
<td>381 (58) (50) (71)</td>
</tr>
</tbody>
</table>

1. Derived from survey question 16.
2. Derived from survey question 11.
3. Derived from survey question 17.
of the rise in the costs of health care and legal services. Furthermore, consumers may incur costs that are difficult to measure in terms of pure monetary value. For example, patients and potential clients are denied services by 36% of the responding professionals. There is also a cost to consumers who have been “weeded out” by the 78% of professionals who indicate that they are more selective in taking clients or patients because of the fear of a malpractice suit.

In addition to the damaged relationships between professionals and consumers over which the professional has control, there are certain damages over which the professional has no control. When asked how much damage to professional reputation is generally caused by a malpractice suit, 53% of respondents report that some degree of damage is caused by such a suit.\(^\text{27}\) The available choices were: none, or minor transient effect; major short-term effect; or major long-term effect (more than one year). Approximately 16% of Detroit lawyers, 14% of Columbus lawyers, 28% of Detroit doctors, and 11% of Columbus doctors believe that a malpractice suit will have a major long-term effect on reputation. In addition, professionals were asked how they thought a malpractice suit would affect their practice caseload.\(^\text{28}\) Sixty-two percent indicate that there would be no decrease. Respondents were also given the choices of major short-term decrease and major long-term decrease (more than one year), similar to the preceding question regarding damage to reputation. As to both reputation and caseload, the responses of those sued were substantially different from the responses of those not sued. Table VIII compares these responses. It is apparent from an examination of table VIII that each group perceives a greater damage to professional reputation than to caseload. More than one-half of each group—except Columbus doctors who have not been sued—predict that a malpractice suit would not have any effect on practice caseload. Detroit doctors, who have the highest incidence of malpractice suits (see table III), also have the highest percentage believing that a malpractice suit will have a major long-term effect on professional reputation.

Other than slight variations, the responses of the two professions were similar on both questions dealing with damage to reputation and caseload. There is a notable difference, however, between the responses of professionals sued and professionals not

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27. See question 12 in the appendix.
28. See question 13 in the appendix.
### TABLE VIII
DAMAGE TO REPUTATION AND CASELOAD

<table>
<thead>
<tr>
<th>Amount of Damage</th>
<th>Detroit Lawyer</th>
<th>Columbus Lawyer</th>
<th>Detroit Doctor</th>
<th>Columbus Doctor</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Total No. (%)</td>
<td>NS (%)</td>
<td>S (%)</td>
<td>Total No. (%)</td>
</tr>
<tr>
<td><strong>No Damage:</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Reputation</td>
<td>114 (49)</td>
<td>44</td>
<td>68</td>
<td>70 (40)</td>
</tr>
<tr>
<td>Caseload</td>
<td>163 (70)</td>
<td>67</td>
<td>81</td>
<td>113 (65)</td>
</tr>
<tr>
<td><strong>Major Short-Term</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Reputation</td>
<td>74 (32)</td>
<td>35</td>
<td>19</td>
<td>72 (41)</td>
</tr>
<tr>
<td>Caseload</td>
<td>41 (18)</td>
<td>19</td>
<td>13</td>
<td>50 (29)</td>
</tr>
<tr>
<td><strong>Major Long-Term</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Reputation</td>
<td>38 (16)</td>
<td>18</td>
<td>9</td>
<td>25 (14)</td>
</tr>
<tr>
<td>Caseload</td>
<td>21 (9)</td>
<td>11</td>
<td>2</td>
<td>7 (4)</td>
</tr>
</tbody>
</table>

1. Derived from survey questions 12 and 13. Note that the "No Damage" heading in this table is abbreviated for "None, or minor transient effect." See question 12 in the appendix.
sued. Professionals who have been sued are much more likely to believe that a suit causes no damage to reputation or caseload. These responses would, at a minimum, allow the inference that the actual effects of a malpractice suit are not as great as the perceived effects.

In response to a question regarding the perceived confidence of consumers in a professional who has been sued for malpractice,29 well over half of those responding predict that consumers would have less confidence. Twenty-nine percent of Detroit lawyers, 24% of Detroit doctors, 18% of Columbus lawyers, and 12% of Columbus doctors indicate that a malpractice suit would result in a long-term loss of confidence. Twenty-one percent of Columbus lawyers and doctors, 28% of Detroit doctors, and 14% of Detroit lawyers predict that a suit would result in no loss of confidence. When the groups are divided into respondents who have and have not been sued, those who have been sued believe that a suit has less effect on the confidence of the consumer than those not sued. Of those who have been sued, 15% of Detroit lawyers, 38% of Columbus lawyers, 29% of Detroit doctors, and 27% of Columbus doctors report that a suit results in no loss of consumer confidence. On the other hand, of professionals who have not been sued, 86% of Detroit lawyers, 82% of Columbus lawyers, 75% of Detroit doctors, and 84% of Columbus doctors believe that a malpractice suit will result in a loss of confidence by the consumer.

Despite the perceived effects of a malpractice suit on the practice of the professional, approximately 70% of each group, including those who have been sued for malpractice, indicate that they would most likely disclose their malpractice to a patient or client injured by their malpractice. On the other hand, the data also reveal that approximately 25% of each group would not disclose their malpractice even if it injured a consumer of their services. This figure, though probably low, is astonishing because both professions are under an ethical, if not legal, obligation to disclose their acts of malpractice to their patients or clients.30

The risks of malpractice are apparent to both doctors and lawyers. Both professions express concern about the effects that a suit has on the practice of the sued professional. Although few predict great damage to their caseload as a result of a suit, professionals in both groups are more careful in selecting their consumers. Finally, this study finds that there is a substantial dif-

29. See question 15 in the appendix.
30. See Griffith, supra note 25, at 50.
ference between the responses of individuals who have been sued and those who have not been sued. What are foreseen as considerable effects by those who have not been sued are seen as less damaging by professionals who have actually been sued. Thus, it may be inferred that the actual effects of a malpractice suit, in most cases, are not as substantial as the perceived effects.

E. Personal Effects of a Suit

A fourth area of inquiry studied the perceptions of professionals with respect to the personal side effects of a malpractice suit. Professionals were asked about the effects of a suit on self-esteem, family relationships, and physical and mental health.

It was hypothesized that one of the most potentially negative effects of a suit would be on the self-esteem of the sued professional. When asked if they believe that being sued for malpractice, regardless of fault, would affect their self-esteem, a majority of each group predict that a malpractice suit would have at least some effect on self-esteem. The responses of the two professions are fairly similar. Approximately 58% of both groups of lawyers, 55% of the Detroit doctors, and 64% of the Columbus doctors agree that a suit would result in a temporary decrease in self-esteem. The responses of lawyers who have been sued indicate that the effect of a malpractice suit on self-esteem is less than that perceived by the unsued. Of those sued for malpractice, 49% of Detroit lawyers, 47% of Columbus lawyers, 54% of Detroit doctors, and 61% of Columbus doctors respond that a suit would result in a temporary decrease in self-esteem. A small minority of each group indicate that a malpractice suit would result in a long-term loss of self-esteem. Only 7% of both groups of lawyers, 9% of Columbus doctors, and 15% of Detroit doctors indicate that a suit would result in a long-term loss of self-esteem.

A second question concerning the personal effects of a malpractice suit sought to determine the physical or mental health effects, if any, expected among professionals sued for malpractice. Respondents were asked to select the most common health effect from the following choices: alcohol/drug abuse; behavioral/personality change, such as long-term debilitating depression; physical illness; or none of the above. Table IX reflects

31. See question 20 in the appendix.
the responses of the four groups. It also compares the responses of those sued with those not sued. Among those who predict a health effect, behavioral/personality change was the most common. Because the question offered choices, however, respondents who gave multiple responses were dumped into the “none of the above” category. For this reason, the number of physical effects predicted is greater than the pure numbers indicate.

Alcohol and drug abuse are problems predicted by a substantial number of the unsued. Nevertheless, three of the four sued professional groups find the reality less than the fear. The only exception among those sued are Detroit lawyers, who believe that alcohol and drug abuse are common personal effects of a malpractice suit. Based on an analysis of table IX, a clear majority of the respondents believe that one (or more) of the listed health effects is common among professionals who have been sued for malpractice. Among the respondents who have been sued for malpractice, however, nearly 50% indicate that none of the listed health effects are common. Consequently, the effects of an actual suit seem less than the feared effects anticipated by the unsued.

A final question relating to the personal effects of a malpractice suit asked respondents how being a malpractice defendant would change a professional’s relationship with his or her family.32 There was a substantial difference between the perceptions of lawyers and doctors. Approximately 46% of both groups of lawyers predict that there would be no change in family relationships. In contrast, only 25% of each group of doctors believe that no change would occur. Although over one-half of each group indicate that a suit would result in a change in family relationships, many of those who responded indicate that such a suit would result in closer family ties. Table X compares the changes predicted by each group. It also compares the responses of professionals who have been sued with those who have not been sued. The responses of sued professionals are consistent with earlier responses to questions concerning practice effects. A higher percentage of those who have been sued, and Detroit lawyers in particular, indicate that a malpractice suit would have no effect on family relationships. Again, this seems to show that the fear appears worse than the reality.

32. See question 18 in the appendix.
<table>
<thead>
<tr>
<th>Effects</th>
<th>Detroit Lawyer</th>
<th>Columbus Lawyer</th>
<th>Detroit Doctor</th>
<th>Columbus Doctor</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>No. (%)</td>
<td>NS (%)</td>
<td>S (%)</td>
<td>No. (%)</td>
</tr>
<tr>
<td>Alcohol/Drug Abuse</td>
<td>50 (21)</td>
<td>22 (17)</td>
<td>17 (17)</td>
<td>57 (33)</td>
</tr>
<tr>
<td>Behavioral/Personality Change</td>
<td>56 (24)</td>
<td>24 (23)</td>
<td>23 (23)</td>
<td>37 (23)</td>
</tr>
<tr>
<td>Physical Illness</td>
<td>5 (2)</td>
<td>2 (2)</td>
<td>2 (2)</td>
<td>7 (4)</td>
</tr>
<tr>
<td>Total: Effect</td>
<td>111 (47)</td>
<td>48 (42)</td>
<td>42 (42)</td>
<td>101 (60)</td>
</tr>
<tr>
<td>None of Above</td>
<td>85 (36)</td>
<td>34 (47)</td>
<td>47 (47)</td>
<td>47 (27)</td>
</tr>
<tr>
<td>Total Respondents</td>
<td>196 (83)</td>
<td>82 (82)</td>
<td>89 (89)</td>
<td>148 (87)</td>
</tr>
</tbody>
</table>

1. Derived from survey question 20.
<table>
<thead>
<tr>
<th>Type of Change</th>
<th>Detroit Lawyer</th>
<th></th>
<th>Columbus Lawyer</th>
<th></th>
<th>Detroit Doctor</th>
<th></th>
<th>Columbus Doctor</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Total</td>
<td>NS</td>
<td>S</td>
<td></td>
<td>Total</td>
<td>NS</td>
<td>S</td>
<td></td>
</tr>
<tr>
<td>Closer Family Ties</td>
<td>27</td>
<td>(12)</td>
<td>(12) (9)</td>
<td></td>
<td>22</td>
<td>(13)</td>
<td>(13) (9)</td>
<td></td>
</tr>
<tr>
<td>Temporary Damage</td>
<td>81</td>
<td>(35)</td>
<td>(39) (19)</td>
<td></td>
<td>62</td>
<td>(36)</td>
<td>(36) (35)</td>
<td></td>
</tr>
<tr>
<td>Major Long-Term Deterioration</td>
<td>7</td>
<td>(3)</td>
<td>(3) (2)</td>
<td></td>
<td>7</td>
<td>(4)</td>
<td>(4) (6)</td>
<td></td>
</tr>
<tr>
<td>Total Change</td>
<td>115</td>
<td>(50)</td>
<td>(54) (30)</td>
<td></td>
<td>91</td>
<td>(53)</td>
<td>(53) (50)</td>
<td></td>
</tr>
<tr>
<td>No Change</td>
<td>107</td>
<td>(46)</td>
<td>(40) (68)</td>
<td></td>
<td>78</td>
<td>(45)</td>
<td>(44) (50)</td>
<td></td>
</tr>
<tr>
<td>No Response</td>
<td>12</td>
<td>(4)</td>
<td>(6) (2)</td>
<td></td>
<td>5</td>
<td>(2)</td>
<td>(3) (0)</td>
<td></td>
</tr>
<tr>
<td>TOTAL</td>
<td>234</td>
<td>(100)</td>
<td>(100) (100)</td>
<td></td>
<td>174</td>
<td>(100)</td>
<td>(100) (100)</td>
<td></td>
</tr>
</tbody>
</table>

1. Derived from survey question 18.
Although it is apparent that the perceptions of the medical and legal professions are not as similar for personal effects as for practice effects, the majority of each of the four groups indicate a belief that a malpractice suit will have some effect on the self-esteem, health, and family relationships of the sued individual. When the four groups are broken down into those who have been sued and those who have not been sued, however, the results are markedly different. As with practice effects, the personal effects experienced by professionals who have been sued are substantially less than the effects expected by professionals who have not been sued. Doctors perceive the effects to be greater than lawyers in most instances. These perceptions are, for the most part, consistent with the generally held perceptions of the medical profession. 33

F. The Professions' Perceptions of Dispute Resolution Options

The final substantive area studied probes the perceptions of the two professions toward the legal system and, in particular, the system for handling professional malpractice suits. Unlike many of the earlier discussed substantive areas, the legal and medical professions are clearly divided in their perceptions of the system. The largest divergence in perceptions is seen in the responses to question number 4: "Do you feel the present system for litigating malpractice claims against our profession is reasonably fair to the defendant professional?" There is a notable difference between the responses of lawyers and doctors. The responses of professionals who have been sued for malpractice are comparable to the responses received from the profession of which they are members. Table XI compares the responses of the four major groups.

## TABLE XI
FAIRNESS OF THE PRESENT SYSTEM¹

<table>
<thead>
<tr>
<th>System</th>
<th>Detroit Lawyer</th>
<th>Columbus Lawyer</th>
<th>Detroit Doctor</th>
<th>Columbus Doctor</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Total No. (%)</td>
<td>NS (%)</td>
<td>S (%)</td>
<td>Total No. (%)</td>
</tr>
<tr>
<td>Reasonably Fair</td>
<td>183 (78)</td>
<td>(78) (81)</td>
<td>(73) (75)</td>
<td>8 (5) (10)</td>
</tr>
<tr>
<td>Not Reasonably Fair</td>
<td>41 (18)</td>
<td>(17) (19)</td>
<td>(21) (25)</td>
<td>154 (94)</td>
</tr>
<tr>
<td>No Response</td>
<td>10 (4)</td>
<td>(5) (0)</td>
<td>(6) (0)</td>
<td>2 (1) (3)</td>
</tr>
<tr>
<td>TOTAL</td>
<td>234 (100)</td>
<td>(100) (100)</td>
<td>(100)</td>
<td>164 (100)</td>
</tr>
</tbody>
</table>

1. Derived from survey question 4.
The overwhelming majority of doctors—94% of Detroit doctors and 77% of Columbus doctors—respond that the present system is not even reasonably fair to the defendant professional. This is in contrast to only 18% of Detroit lawyers and 21% of Columbus lawyers who agree that the present system is not reasonably fair. This sense of unfairness and the evident frustration with the present system on the part of doctors is well-documented in anecdotally based medical literature.34

In evaluating the present system, professionals were asked to choose how they would prefer to be judged for an alleged act of malpractice.35 The alternatives were: civil trial, with a lay jury and monetary damages (U.S. system); binding arbitration with one defense-appointed, one plaintiff-appointed, and one neutral arbitrator; a jury of professional colleagues; or a criminal trial with penal sanctions (European system). The most popular choice of each group—except Columbus lawyers—was a jury of professional colleagues. Columbus lawyers, as a group, prefer binding arbitration over the other alternatives. Table XII compares the popularity of the choices and contrasts the responses of professionals who have been sued with those who have not been sued. Similar to the data contained in table XI, table XII reflects the dissatisfaction of doctors, whether sued or unsued, with the lay jury system. When given a choice, only 3% of Detroit doctors and 9% of Columbus doctors prefer the present system of judgment. In contrast, 36% of Detroit lawyers and 38% of Columbus lawyers who have been sued prefer the present system. The data also reflect trust in the potentially neutral arbitration system and in fellow colleagues who, perhaps, are facing the same pressures and can, because of their professional empathy, appreciate the situation in which a fellow practitioner may find him or herself. Surprisingly, lawyers who have been sued consider the present jury system more fair than attorneys not yet sued.

The dissatisfaction of the medical profession with the present jury system is further illustrated in responses to a question concerning meritless cases.36 Table XIII compares these responses. The data show that a substantially higher percentage of doctors than lawyers believe that over 50% of malpractice suits are

35. See question 9 in the appendix.
36. See question 5 in the appendix.
TABLE XII
PREFERRED SYSTEM OF JUDGMENT

<table>
<thead>
<tr>
<th>System</th>
<th>Detroit Lawyer</th>
<th>Columbus Lawyer</th>
<th>Detroit Doctor</th>
<th>Columbus Doctor</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Total No. (%)</td>
<td>NS (%)</td>
<td>S (%)</td>
<td>Total No. (%)</td>
</tr>
<tr>
<td>Civil Trial (U.S.)</td>
<td>68 (29)</td>
<td>27 (36)</td>
<td></td>
<td>41 (24)</td>
</tr>
<tr>
<td>Binding Arbitration</td>
<td>74 (32)</td>
<td>34 (23)</td>
<td></td>
<td>69 (40)</td>
</tr>
<tr>
<td>Jury of Colleagues</td>
<td>87 (37)</td>
<td>36 (41)</td>
<td></td>
<td>58 (34)</td>
</tr>
<tr>
<td>Criminal Trial</td>
<td>2 (1)</td>
<td>1 (0)</td>
<td></td>
<td>2 (1)</td>
</tr>
<tr>
<td>No Response</td>
<td>3 (1)</td>
<td>2 (0)</td>
<td></td>
<td>4 (1)</td>
</tr>
<tr>
<td>TOTAL</td>
<td>234 (100)</td>
<td>100 (100)</td>
<td></td>
<td>174 (100)</td>
</tr>
</tbody>
</table>

1. Derived from survey question 9.
without merit. More than one-half of all respondents, however, believe that at least 25% of malpractice suits are without merit.

The data in table XIII are consistent with the responses obtained from both professions regarding deviations from the standards of care and the risk of malpractice (see tables IV and V). Doctors admit fewer deviations from standards of care, recognize a higher risk of malpractice, and experience a higher incidence of lawsuits as a profession (see table III). This helps to explain the doctors' apparent distrust of and frustration with the system. The data show that lawyers, on the other hand, are much more comfortable than doctors with the present system of litigating malpractice claims. The data also reveal, however, that lawyers are not as comfortable as may have been expected. Even though fewer lawyers indicate disillusionment with the system, a considerable percentage express a desire for change in the present system (see tables XI and XII).

Finally, respondents were asked to indicate who should bear the primary responsibility for educating and preparing professionals to cope with and respond to malpractice suits. The alternatives were: professional schools; professional associations; practitioner himself/herself; or all of the above. Not surprisingly, the majority of all four groups, and 64% of all respondents, indicate that "all of the above" should assume responsibility. The second most frequent choice was "professional associations," selected by approximately 15% of all respondents. The degree of concern with malpractice is exhibited by the overriding response that the primary responsibility for educating and preparing professionals to cope with and respond to a malpractice suit should not rest with just the professional school, professional association, or the individual, but rather should be borne by all.

Conclusion

The current "medical malpractice insurance crisis" did not come about because of a decline in the quality of medical care. Rather, it came about because of the rapid increase in the financial costs associated with accountability. But for the rapid in-

37. Seventy-two percent of Detroit doctors and 68% of Columbus doctors believe that over 50% of malpractice suits are without merit, whereas only 36% of Detroit lawyers and 43% of Columbus lawyers indicate this belief.
38. See question 3 in the appendix.
### TABLE XIII

**CASES WITHOUT MERIT**

<table>
<thead>
<tr>
<th>Percentage Without Merit</th>
<th>Detroit Lawyer</th>
<th>Columbus Lawyer</th>
<th>Detroit Doctor</th>
<th>Columbus Doctor</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Total No. (%)</td>
<td>NS (%)</td>
<td>S (%)</td>
<td>S (%)</td>
</tr>
<tr>
<td>25-50%</td>
<td>75 (32)</td>
<td>(32)</td>
<td>(34)</td>
<td>41 (23)</td>
</tr>
<tr>
<td>50-75%</td>
<td>64 (27)</td>
<td>(27)</td>
<td>(28)</td>
<td>50 (29)</td>
</tr>
<tr>
<td>Over 75%</td>
<td>20 (9)</td>
<td>(7)</td>
<td>(13)</td>
<td>24 (14)</td>
</tr>
<tr>
<td>No Response</td>
<td>18 (8)</td>
<td>(8)</td>
<td>(8)</td>
<td>8 (5)</td>
</tr>
<tr>
<td><strong>TOTAL</strong></td>
<td>234 (100)</td>
<td>(100)</td>
<td>(100)</td>
<td>174 (100)</td>
</tr>
</tbody>
</table>

1. Derived from survey question 5.
crease in the costs of accountability, one can speculate that problems with the quality of service would have been allowed to continue and that legislative efforts toward structural reform would not have begun.

This study demonstrates that the problems caused by malpractice are similar for doctors and lawyers. This suggests that solutions to problems, whether the problems are professional discipline, impacts of suits, or costs of insurance, are best addressed generically. Whatever works to reduce malpractice among physicians may work to reduce malpractice among attorneys. Likewise, legislation developed to address the medical malpractice crisis should also be tested to see if it addresses the problems created by the impending legal malpractice crisis. Finally, to the extent that there is a need for structural reform through legislative initiatives, one must hope that reform will be based on empirical data as opposed to anecdotal proof or subjective predictions.
APPENDIX

PLEASE READ INSTRUCTIONS CAREFULLY

Please answer all questions, selecting your one best response to each based on your own personal opinion. DO NOT SIGN OR OTHERWISE IDENTIFY YOURSELF ON THIS QUESTIONNAIRE!

1. How concerned are you with being sued for malpractice?
   ____ No concern
   ____ Moderate concern
   ____ Great concern

2. What do you think will be the trend in the next decade in the number of malpractice claims filed against our profession?
   ____ Increase
   ____ Decrease
   ____ Remain relatively stable
   ____ Don’t know

3. Who should have the primary responsibility for educating and preparing professionals to cope with and respond to a malpractice suit?
   ____ Professional schools
   ____ Professional associations
   ____ Practitioner himself/herself
   ____ All of the above

4. Do you feel the present system for litigating malpractice claims against our profession is reasonably fair to the defendant professional?
   ____ Yes
   ____ No

5. What percentage of malpractice cases filed against our profession do you suspect are without merit?
   ____ 0 - 25%
   ____ 25 - 50%
   ____ 50 - 75%
   ____ Greater than 75%
6. Do competent professionals sometimes deviate from accepted standards of care, thereby causing injury to their consumer?
   _____ Yes
   _____ No

7. How would your being a defendant in a malpractice suit affect your willingness to report to licensing agencies or testify against a colleague for malpractice?
   _____ No change
   _____ More willing to take some type of action
   _____ Less willing to take any action

8. If you committed malpractice that injured a consumer of your professional service, would you most likely disclose it to that consumer?
   _____ Yes
   _____ No

9. If you must be judged for an alleged act of malpractice would you prefer:
   _____ A civil trial with a lay jury and monetary damages (U.S. system)
   _____ Binding arbitration with one defense-appointed, one plaintiff-appointed, and one neutral arbitrator
   _____ A jury of professional colleagues
   _____ A criminal trial with penal sanctions (European system)

10. What do you consider adequate malpractice insurance coverage for yourself?
    _____ 0
    _____ $50,000
    _____ $100,000
    _____ $300,000
    _____ $500,000+

11. Have you ever rejected a potential consumer of your services for fear that the person might sue you for malpractice?
    _____ Yes
    _____ No
12. How much damage to one's professional reputation do you believe is generally caused by a malpractice suit?
   _____ None, or minor transient effect
   _____ Major short-term effect
   _____ Major long-term effect (more than one year)

13. How do you think being sued for malpractice would most likely affect your practice caseload?
   _____ No decrease
   _____ Major short-term decrease
   _____ Major long-term decrease (more than one year)

14. How would “going bare” (uninsured) affect your willingness to settle a claim?
   _____ No effect, depends on facts of case
   _____ Increase likelihood of settlement
   _____ Decrease likelihood of settlement

15. Do you believe that consumers of our profession’s services generally have less confidence in a professional who they know has been sued for malpractice?
   _____ No
   _____ Short-term loss of confidence
   _____ Long-term loss of confidence

16. Does being sued for malpractice make a practitioner consciously more selective in accepting consumers of his/her service?
   _____ Yes
   _____ No

17. Has the fear of being sued for malpractice prompted you to engage in procedures and/or practices beyond those required by the standard of care and which result in increased costs?
   _____ Yes
   _____ No

18. How do you imagine being a malpractice defendant changes a professional’s relationship with his/her family?
   _____ No change
   _____ Closer family ties
   _____ Temporary damage
   _____ Major long-term deterioration
19. Do you believe that being sued for malpractice, regardless of fault, would affect your self-esteem?
   _____ No effect
   _____ Temporary decrease in self-esteem
   _____ Long-term loss of self-esteem

20. Which of the following mental or physical health effects do you believe are most common among professionals sued for malpractice:
   _____ Alcohol/drug abuse
   _____ Behavioral/personality change, such as long-term debilitating depression
   _____ Physical illness
   _____ None of the above

21. What is your sex?
   _____ Female
   _____ Male

22. What is your age?
   _____ Under 30
   _____ 31 - 40
   _____ 41 - 50
   _____ 51 - 60
   _____ Over 60

23. How many years have you been in practice?
   _____ 0 - 5
   _____ 6 - 15
   _____ 16 - 25
   _____ 26 - 35
   _____ Over 35

24. What type of practice do you have?
   _____ Solo
   _____ Group
   _____ Institutional

25. How much malpractice insurance coverage do you have?
   _____ 0
   _____ $50,000
   _____ $100,000
   _____ $300,000
   _____ $500,000 +

26. What is your annual net income from your professional practice?
   _____ Under $25,000
   _____ $25,000 - $50,000
   _____ $50,000 - $100,000
27. Have you ever been sued for professional malpractice?
   — Yes, but only once
   — Yes, more than once
   — No

28. Have you (or your insurance company) ever paid damages via settlement or court decision in a malpractice case?
   — Yes
   — No

29. Have you deviated from our profession's standard of care and caused an injury to a consumer, within the past five years, for which no claim was filed?
   — Yes
   — No

30. Have you known of a competent colleague's deviation from accepted standards of care which resulted in an injury, within the past five years, for which no claim was filed?
   — Yes
   — No

31. Do you think you will be sued for malpractice sometime within the next 10 years?
   — Yes
   — No

PLEASE PLACE THIS QUESTIONNAIRE IN THE ENCLOSED SELF-ADDRESSED AND STAMPED ENVELOPE AND FORWARD IT TO US TODAY.

THANK YOU VERY MUCH FOR YOUR HELP.