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Doctors must be allowed to be doctors again

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The practice of law, occasionally, is stressful.

I have friends in the profession who might claim the first sentence of this column is the greatest understatement they've ever read. I am fortunate in that I have been able to run my own practice for almost 30 years. Although it's true that in the early years my father was my senior partner. We disagreed on many things, but I deferred to him without hesitation when it came to questions about the law.

I would be disingenuous if I did not admit we butted heads on occasion, but his devotion to morality and ethics, and his vigilance to the administration of justice equally to all is still inspirational, almost 20 years after his passing. He was concerned that all human beings be treated with dignity and respect — unless and until they proved themselves unworthy.

That being said, and with all due respect to my partner, Sheldon Boyce, to whom I often defer on certain questions, I have had the good fortune to make my own decisions about virtually every aspect of my practice, especially before Boyce joined us. The reason I bring this up, is that I could not imagine functioning as an employee of a corporation that directed whether I should bring a particular motion in the midst of any given case, who I must or must not depose in pre-trial phases of litigation or even how much time I would be allowed to devote to each client. It would be a disaster, and I would consider it intolerable. I could not function to the extent I deem necessary to zealously practice my profession.

However, physicians today are almost exclusively forced into employment by large corporate health care providers, with the additional disadvantage of being told how to practice medicine by health care insurers. It is no secret that redress for some medical errors must be preserved in our civil justice system. Just as important, however, is the idea that doctors should not be placed in the paradox in which they now find themselves. Doctors worry about the occasional unscrupulous attorney who may bring a frivolous lawsuit, thereby increasing their defensive practice of medicine by ordering tests they might otherwise feel are unnecessary. Doctors also are being told they may not conduct tests they feel are extremely important for their patients' well-being when health insurers deny payment for such testing.

Making matters worse, many physicians are refusing to treat patients who have been involved in motor vehicle accidents because of draconian regulations and statutes in New York's No-

Fault law. The situation has exploded to its current state, wherein some physicians are providing excellent care, doing the best job possible but are being told retroactively their patient's no-fault carrier is refusing any payment whatsoever. Doctors who are paid by no-fault are receiving an intolerably low fee, thus the refusal by many doctors to even treat such patients. This is blatantly unconscionable.

Doctors must be given back their patients and be permitted to practice medicine the way they used to, with the freedom and dignity to conform their practice to the Hippocratic Oath, with fair compensation.

In one local office, pharmaceutical companies have entered into deals with a major health care provider to run pharmaceutical advertisements on flat screen televisions in doctors' waiting rooms. When physicians complain, they are reminded that they are employees of the corporation and have no say in the matter. Additionally, due to the fact that New York appropriated almost \$600 million from a malpractice carrier for placement in the general fund, malpractice carriers are now using the "loss" to support a claim that it was generated by litigation, which simply is untrue.

I was thrilled when a doctor recently called me (after he learned I was elected president of the New York State Academy of Trial Lawyers) to ask whether the two professions could not work together to solve many of these problems. He was shocked to learn that only 520 of the state's 70,000 physicians were responsible for a huge percentage of medical errors and resulting claims. He was overwhelmed to learn the Academy of Trial Lawyers has suggested a reduction in primary coverage, from \$1.3 million to \$1 million, which immediately would lower physicians' overhead. Beyond that, he was amazed to learn we had offered a plan to state insurance regulators that would provide, at absolutely no cost, an additional policy for each physician in New York in the amount of \$10 million dollars excess coverage.

The problems are not simple but, ultimately, they must be resolved so that doctors can be doctors once again.

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