‘A RESCUE FROM DANGER’
A TRIBUTE TO JOHN C. COOKSEY, MD

DONALD J. PALMISANO, MD, JD

John C. Cooksey, MD is the humble and persistent visionary who produced the legendary House Bill 1465 that became, against great odds, the idea whose time had come: Louisiana Act 817 of 1975, which contained a $500,000 total cap on malpractice awards.

THE SUMMER OF ’75

How well I remember. It was the summer of ’75. I was shuttling back and forth to Baton Rouge to testify on behalf of the Orleans Parish Medical Society before the Joint Conference Study Committee chaired by Senator Ted Hickey. The Committee’s task was to study the medical malpractice insurance climate in Louisiana. A dramatic story unfolded as multiple witnesses told of their plight.

The Louisiana malpractice climate in 1975 was in a crisis, mirroring similar crises in other states. The Louisiana State Medical Society had its Patients’ Insurance Package (PIP) of professional liability bills, none of which contained a cap on damages. A fierce debate raged at the annual meeting of the Louisiana State Medical Society with one of the legal counsel who advised the Medical Society against a cap.

Enter John Cooksey, a 34-year-old ophthalmologist from Monroe, Louisiana. Like Cincinnatus of yesteryear in Roman times, John came forward to prevent a crisis and win the battle, then returned to his daily devotion of improving and restoring eyesight to his patients. He initially worked outside of the Medical Society and obtained a copy of the Indiana law containing a cap on damages which had recently passed in Indiana. John then got a friendly legislator to enter it into the Louisiana legislature on the last day bills could be filed. Next, he set about to assemble a team that was subsequently known as the “Street Fighters”. With his team he eventually got the Medical Society to support HB 1465. As a result, this John Cooksey-inspired legislative bill, patterned after the recently passed Indiana bill, overcame great odds, passed its last hurdle in the Senate, and went to Governor Edwards for signature. But like a good suspense novel, one more attempt was made to kill the bill. More on this later.

My first encounter with John Cooksey was Friday
night, May 30, 1975. While on-call for my surgical group, I received a phone call. A northern Louisiana voice, distinctly different from my Irish Channel New Orleans accent, said:

“Hello, this is John Cooksey in Monroe, Louisiana. I have heard how you effectively debated the attorney at the Louisiana State Medical Society meeting who opposed a limitation of liability cap in medical malpractice cases. I am putting together a team to get the Indiana Plan passed in Louisiana and I want you on the team. There is a 6:00 AM flight tomorrow from New Orleans to Monroe. I will pick you up at the airport and we will drive to Shreveport to pick up Senator Adam Benjamin of Indiana, a key player in the passage of the Indiana law, who is flying here to meet with us and inform us how it was accomplished in Indiana.”

Thus began an odyssey through the corridors of power in our state capital that did not end until the House Bill 1465 was passed by the Senate on July 13, and then presented to the Governor for signature at a luncheon with members of the “Street Fighters” in attendance.

Crises abounded during the session. Physician testimony was given by Dr Dave Carlton from LeCompte, Louisiana, representing the rural family practitioners, and by me, representing the urban specialists. The details of this dramatic civics lesson could fill the pages of a best-selling suspense thriller. Could the movie be far behind? Leading characters included State Representative Shady Wall of West Monroe. He was a co-sponsor of the bill and was the equivalent of the bill’s godfather. Whenever it appeared that the bill was caught in a logjam or was being filibustered, Shady would appear and speed the bill on its way to the next destination. Finally, the possibility of failure came forth again at the luncheon with Governor Edwards. The Governor’s General Counsel whispered in his ear and advised him to veto the bill. The Governor smiled, turned to us and said,

“No, I am not going to veto this bill. This is the first time I have ever seen the doctors come to the Legislature in favor of something. Previously they only showed up to oppose something. I am going to sign it.”

He picked up a pen, signed the bill, and the flash of the photographer’s camera recorded for posterity the end result of our equivalent of the climbing of Mount Everest for the first time. John Cooksey was there every step of the way, picking the team, planning strategy, offering encouragement, and never losing faith in the eventual successful outcome.

Thus House Bill 1465 became Act 817 of 1975 (LSA-R.S.40:1299.41 et seq.) and the liability cap was upheld as constitutional by the Louisiana Supreme Court in Butler v. Flint Goodridge (No 92 CC 0559, decided October 19, 1992, 607 So.2d 517 (La 1992), and a rehearing was denied on November 25, 1992). Other provisions of the Act were upheld in Williams v. Kushner, 549 So.2d 294 (La 1989) and in Everett v. Goldman 359 So.2d 1256 (La 1978).

Although there is a need to enroll and pay a “surcharge” to the Patients’ Compensation Fund, the law has dramatically improved the professional liability climate in Louisiana.

The lead story in the October 13, 1975 issue of Medical Economics, “They Won Malpractice Relief—Without A Walkout”, publicized the dramatic chronology of this success story. In addition, I wrote articles for the August 1975 and September 1975 issues of The Bulletin of the Orleans Parish Medical Society about the individuals who played key roles in the passage of this historic legislation. Spouses were also enlisted in this battle and the woman who played a critical role was Mary Lou Winters, wife of Dr Harry Winters, of Columbia, Louisiana. She was Democratic National Committeewoman, and her charm and political acumen endlessly opened doors originally inaccessible to physicians.

Also it is important to remember that attorneys helped accomplish the enactment of HB 1465 into law. Jesse McDonald, the legal scholar and special counsel hired by John Cooksey to help with the passage of Act 817, played a key role, as did State Representative John Haingel and State Senator Tom Casey. Finally, Governor Edwards, an attorney, signed the bill into law. Don’t forget this the next time you hear a doctor say it is impossible to pass liability reform because the legislature is controlled by attorneys.

That legislative session was a watershed for the LSMS and truly a “rescue from danger”. The successful struggle that summer to accomplish malpractice reform with “Act 817” as the centerpiece combined with the “PIP” and other bills poignantly demonstrat-
ed the need for enhancement of our legislative efforts and led to the development of the Louisiana State Medical Society's modern Office of Governmental Affairs.

John has continued to serve his patients, his community, and those in need of his services in foreign lands. He set up a clinic in Africa and has treated the poor and the rich equally with care and excellence. In addition, he recently completed the MBA program at the University of Texas in Austin, shuttling there on weekends and working in his practice during the week. He is humble, compassionate, eloquent, honest and fulfills Rudyard Kipling's adage in the poem "If": "If you can fill the unforgiving minute

with sixty seconds of distance run—
Yours is the Earth and everything that's in it,
And—which is more—you'll be a Man, my son!"

John's visionary ideas and energy continue to abound. His prematurely gray hair gives him a distinctive, statesman-like appearance. He is about to reanimate his Cincinnatus role and begin the quest to be a citizen-legislator in the United States Congress. John is assembling his campaign stuff, planning strategy, and is about to begin the necessary fund raising for this arduous task. He awaits the next important development, which is the redistricting of the congressional districts as mandated by federal court.

In October 1983, I wrote an update about Act 817
of 1975 in Capsules, the newsletter of the Louisiana State Medical Society (Vol VI, No 10). In that article, I stated:

"Yes, as the winds of the professional liability crisis reach hurricane velocity in other states, let us not fail to thank our humble and courageous visionary, Dr John Cooksey, father of 'Act 817' on the eighth anniversary of the passage of this model legislation. At the very least, mail a thank-you note to John C. Cooksey, MD, 1310 N 19th St, Monroe, LA 71201. Never fail to personally thank a hero."

On this 20th anniversary, there is even more reason to thank John. Write him a note (the address has not changed), and offer to help him with advice and financial assistance in his quest for Congress.

In addition, you can forward comments to me about how we can help John. For the Internet travelers among you, I can be reached at Intrepid Resources Home Page on the World Wide Web at: http://www.intrepidresources.com or send E-mail to: djp@intrepidresources.com.

FOOTNOTES

1. Most of the following information was taken from various briefs submitted to the Louisiana Supreme Court in Butler v. Flint-Goodridge.
   A. In Louisiana, as of 1975:
      1. Insurance for physicians.
         b. There were only two carriers still providing malpractice insurance for Louisiana physicians: Hartford Insurance Company and St Paul Fire and Marine Insurance Company.
   2. St Paul stopped writing new physicians for a period of 14 months, and switched to the claims-made type of policy and eliminated occurrence policies. In effect, with a claims-made policy, the insured must have the policy in effect when the alleged incidence of malpractice occurs and also have the policy in effect when the claim is filed. Thus, if a physician leaves the company and a suit is subsequently filed for an act that occurred during the policy period, there is no coverage unless a "tail policy" is purchased when the physician leaves. The premium for this "tail policy" is determined at the time the physician leaves. This is definitely an advantage for the insurance company.
   3. Between the two, premium increases over the few proceeding years had been astronomical, as high as 300%, with a promise of equivalent if not greater increases in the years to come.
      a. Hartford got two successive rate increases that essentially caused a 370% rate increase.
   4. Both carriers were openly considering terminating business in the state altogether.
   B. St Paul Insurance Company's Louisiana experience showed: 1. Payment for liability of $100,000 for Health Care Provider.
      2. Limitation of total recovery (not just a limitation on non-economic loss) to $500,000 plus future medical bills as incurred (the addition of medical payments as incurred was added in 1984 amendments after a recommendation by the Governor's Commission on Medical Malpractice).
   C. *Or* the approximately 138 private hospitals in Louisiana in 1974, 57 were insured by the Argonaut Insurance Company. In 1974 Argonaut sought a 100% increase in its rates. The Louisiana Hospital Association supported Argonaut's request for fear that the insurer would otherwise abandon Louisiana. Despite receiving this increase, Argonaut refused to renew any insurance policies beyond April 1, 1975.
      1. Among the hospitals canceled by Argonaut were Baton Rouge General Medical Center, East Jefferson General Hospital, Ochsner Foundation Hospital, Southern Baptist Hospital, Touro Infirmary, and West Jefferson Medical Center.
      2. Many of the hospitals canceled by Argonaut could not obtain other insurance and were required to "go bare." Among those hospitals were Thibodaux General Hospital, Calcasieu Children's Hospital, Baton Rouge General Medical Center, and Crowley Hospital.
   3. Other hospitals were able to purchase insurance, but received lower coverage at a much higher cost.
   2. Key advantages of Act 817 of 1975:
      A. Limitation of liability is $100,000 for Health Care Provider.
      B. Limitation of total recovery (not just a limitation on non-economic loss) to $500,000 plus future medical bills as incurred (the addition of medical payments as incurred was added in 1984 amendments after a recommendation by the Governor’s Commission on Medical Malpractice).
      C. Medical Review Panel (or option of binding arbitration providing the arbitration agreement was signed by the doctor and the patient prior to the filing of a claim).
      D. Prohibition of the Ad Damnnum Clause Prevents stating how much money the plaintiff is suing for; eliminates some of the sensationalism.

FURTHER REFLECTIONS

Danger invites rescue. The cry of distress is the summons to relief. *(From: Cardozo, Benjamin N. In: Wagner v. International Ry. Co., 232 N.Y. 176, 180 (1921).)*

The punishment of wise men who refuse to take part in the affairs of government is to live under the government of unwise men.—Plato (This quote from Plato was engraved on a plaque and sent to Dr Palmisano from Dr Cooksey after the passage of the Louisiana Medical Malpractice Act.)

Palmisano m.d.
Reprinted with the permission of the Journal of the Louisiana State Medical Society.