

QC berates insurers on medical litigation costs

Katherine Towers

A leading Melbourne plaintiff barrister has launched a scathing attack on medical defence organisations, accusing them of using misleading information to intimidate medical negligence victims out of litigation.

Mr Jack Rush QC, who has been involved in several high-profile medical damages cases and is junior vice-chairman of the Victorian Bar, said the MDOs were running a public campaign to make lawyers the scapegoats and doctors the victims of medical negligence litigation.

He said the increase in insurance premiums for doctors was not the result of increased medical negligence litigation, as claimed by the MDOs, but due to poor risk management and inadequate claims handling by the unions.

Mr Rush said the unions were refusing to accept the existence of medical negligence and were misleading the public over the real reason behind the large increase in insurance costs for doctors.

In a speech to the Australian Plaintiff Lawyers Association conference, Mr Rush said he continued to be "amazed by the arrogance" of the medical defence bodies and their inability to recognise the "catastrophic hurt" caused by medical negligence.

"As far as the medical profession is concerned medical negligence really does not exist," he said.

"[They believe] there are very few cases against doctors that involve true malpractice. The medical defence unions argue that

more often a bad result for a patient is due to the natural progress of an illness or the risk inherent in any operation."

He said the unions and doctors' bodies tried to paint plaintiff lawyers as rapacious and opportunistic and used often misleading and extreme cases to press the point.

"Most people who do have claims against doctors go to lawyers who are doing it on a no-win, no-fee basis," he said. "They aren't going to run claims that don't have any substance."

But the general manager of legal services for medical insurance company United Medical Protection, Mr David Brown, denied the allegations and said Mr Rush was being misleading.

Mr Brown said more than 90 per cent of medical negligence claims were settled before trial, with many terminated by solicitors because there was no claim.

"It's naughty to suggest every claim is run by us," he said.

Medical negligence claims had increased dramatically over the past 10 years and, while it was no fault of lawyers, restrictions in the common law areas of motor accident and workers compensation meant solicitors looked for work in other areas.

"The area has certainly become more litigious," he said.

But Mr Rush said doctors should not blame their high insurance costs on an alleged increase in medical negligence litigation and said the medical profession should question the legal strategies of their insurers.

He said the unions had poor risk



Mr Jack Rush QC

management practices and seemed determined to fight any allegation of medical negligence to the foot of the court steps.

"In relation to the conduct of litigation, early assessment and genuine attempts to settle claims with a minimum of costs does not seem to be high on the agenda [of the insurers]," he said.

"Claims management would appear to be another area for reform within the medical defence unions."

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