

## **MALPRACTICE REFORM IS TOO IMPORTANT FOR POLITICS**

### **SAMPLE OP-ED FOR BAR LEADERS**

Ensuring access to health care is a fundamentally American principle. The ability to receive a check-up, to be treated when you are sick, or to have a doctor's assistance during the birth of a child should not be dependent on one's station in life or bank account. Unfortunately, for too many, this ideal is far from reality. While the reasons for this are very complicated, lately we have seen too many generalizations and over-simplifications of the issue that detract from the effort to find meaningful solutions.

Everyone agrees that doctors' malpractice insurance premiums have risen too sharply in the last few years. The question is: why is it happening? Unfortunately, rhetoric has triumphed over analysis, allowing a common misunderstanding to develop that a dramatic rise in lawsuit claims and payouts is the reason liability insurance has increased. But that is simply not supported by the facts.

In fact, according to a report prepared by Public Citizen's Congress Watch, in the last 10 years average physician medical malpractice payouts have increased at a rate only 1 percent above the rate of inflation for medical services overall.

The main reason insurance premiums have risen is because the insurance companies engaged in a pricing war during the roaring '90s. Their investment income, generated with capital raised by medical malpractice premiums, rose dramatically and permitted them to set premiums below the actual cost of these policies. The "fat" from these years was subsidizing the business of insuring doctors.

When the economy slowed, the roosters came home to roost. Investment income fell. Insurance companies raised rates to make up the difference. Premiums spiked, even as the numbers of lawsuits and payouts remained basically constant.

Nevertheless, we continually hear that capping the damages that can be awarded to victims of medical malpractice would solve a cornucopia of our nation's ills. We can expand access to health care, speed up the creation of jobs, reduce Medicare premiums, etc.—all by capping non-economic damages.

In reality, capping damages has already proven ineffective. A recent ABA analysis of states argued by proponents of capping malpractice awards to be either "in crisis" or "showing problem signs" found that 22 of those states already had caps in place. This follows another study by the Weiss Rating Company showing that states with caps in place have failed to prevent sharp increases in medical malpractice insurance premiums, even though insurers enjoyed a slowdown in their payouts.

What caps can do, however, is hurt people who have been seriously harmed by a negligent caregiver—like the woman who had a double mastectomy after she was misdiagnosed with breast cancer, or the man who was recently paralyzed during a botched operation for a brain cyst he didn't have.

Without a doubt, doctors in some practice areas are facing a real financial squeeze. This is a serious problem that is intrinsically entwined with broader trends. Take for example the fact that their fees have been cut in recent years by managed care companies, preferred providers, and government programs such as Medicare and Medicaid. There are serious questions that we, as a society, must address in a serious way, but capping damages provided to those who have proven in a court of law that negligence caused them to be severely injured is not the way to go.

Let's get serious about the challenges facing our nation's health care system and stop looking for silver bullets and convenient scapegoats.