

Attorneys Aren't The Doctors' Problem

To the Editor:

I am responding to your Jan. 30 coverage of the medical malpractice insurance crisis. The problem of growing medical malpractice premiums is a multifaceted topic that needs to be examined from every angle. I disagree that trial lawyers are the cause of this crisis.

While I certainly agree that doctors' malpractice premiums have gotten out of hand, I DISAGREE that reducing lawsuits or capping damages will solve the problem. I believe that any analysis of the problem must consider all the issues of this debate.

First and foremost, there is strong evidence that the recent rise in medical malpractice premiums has a lot to do with investment losses and miscalculations by the insurance carriers.

The medical community experienced similar spikes in premiums in the early 1970s, mid-1980s and early 2000s, corresponding with declines in the carriers' return on investments. A study documenting this fact over the past 30 years was published recently by Americans for Insurance Reform. Their study proves that premium rates are related directly to investment returns, not jury awards.

The recent spike in malpractice premiums in New Jersey mirrors the downturn in the equities markets and the increase in re-insurance premiums caused by the Sept. 11 tragedy. There has been no spike in the number of malpractice claims, sustained jury verdicts or actual payments by carriers in New Jersey to explain these premium increases. In fact, state figures show the overall number of malpractice cases dropped to 1,650 last year, from 1,780 in 1998, a 7% decrease. And despite a shift toward bigger awards, the total amount paid out to patients rose only 2%, to \$235 million in 2001, from \$231 million in 1998.

Further evidence of this relationship is that all non-regulated insurance premiums have risen dramatically in the past two years due to carrier investment losses, not increases in awards. A perfect example is the recent staggering rise in legal malpractice premiums.

Moreover, there is no proof that caps will have any significant effect on reducing malpractice premiums. A study commissioned by the Medical Society of New Jersey found that caps alone would reduce premiums by only 7%. The Medical Society frequently cites California as an example of how caps on damages will solve our problems. But malpractice premiums in California are 19% higher than the national average. Since 1998, premiums in California have risen 37% compared to a national average of 5.7%.

Further, if we cap "pain and suffering" damages we create a whole new problem of who is going to pay for the care and loss of patients injured by medical malpractice. Because eco-

injury, women, children and the elderly tend to receive negligible payments. Their only recourse may be the pain-and-suffering category.

One way to reduce malpractice insurance rates is to reduce the rate of malpractice. Three years ago, the Institute of Medicine estimated that as many as 98,000 Americans die each year due to medical mistakes, many more than are killed annually by auto accidents. In the Vietnam War there were 58,000 American deaths.

In December 2002, The New England Journal of Medicine reported that a survey conducted by the Harvard School of Public Health found that 35% of those doctors surveyed stated that either they or members of their families had experienced medical errors in the course of being treated, and most said the errors had serious health consequences, such as death, long-term disability or severe pain. Three in 10 had observed serious harm to patients due to errors within the past year.

Public Citizen, a consumer group in Washington, said that fewer than 6% of all doctors in New Jersey accounted for 60% of the state's malpractice payments during the 1990s. These repeat offenders often go unpunished by state regulators, contributing to the rise in premiums.

So I believe that any consideration of changing our tort system should be designed to improve the quality of health care by protecting patient safety. An example is mandatory reporting and public disclosure of medical errors. Even though a small percentage of doctors is responsible for a majority of malpractice, most states do not allow consumers access to information about physicians' performance.

Another improvement would be to base malpractice premiums for doctors on the doctors' experience. Bad doctors should pay higher premiums than good doctors, as is the case of one's driving record for automobile insurance. By not adjusting insurance premiums based on performance, the current system does not allow the marketplace to promote good medi-

cine.

The insurance industry has too much control over our health care system. The insurance industry controls patients' access to treatment, quality of care, how doctors practice medicine, how much doctors get paid, and what they pay in overhead and operating expenses. Until we reform the insurance industry to reduce the control it has on the health care system, we will be unable to improve the situation for doctors or, most important, for patients.

I hope that any future discussion of this issue by your publication will explore all areas of concern and not view the matter simply as a lawyers vs. doctors debate.

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