

Which lawsuits are worthy?

Doctors seek to punish the negligent among them, but many cases get to trial without sufficient proof

I would like to address Wednesday's letter by Jon Hinz, director of Fairness and Accountability in Insurance Reform, in which he stated that doctors support constitutional changes that would "eliminate the rights of patients that are injured due to malpractice." This is a complete misrepresentation of what doctors truly want.

First, medical societies at both the national and local levels are very clear about their wish to improve patient safety. Second, physicians want patients who have legitimately suffered from negligence on the part of a physician to have the right to pursue justice. They also support appropriate disciplinary action imposed on that physician.

The problem is that in the past many lawsuits have been pursued in which there was no true medical negligence. The most common examples are lawsuits filed for babies born with cerebral palsy. Despite the fact that the majority of medical evidence indicates that changes causing cerebral palsy often occur before the baby is born (in utero), multiple physicians have been sued after delivering babies with cerebral palsy.

For the cases that make it to court, testimony by medical specialists supporting the in utero origin of cerebral palsy is often ignored by juries. This has resulted in limited access to obstetricians for many patients, especially in rural areas. In addition, many physicians that can't afford to be away from their practice to be in court daily for a trial are forced to settle out of court, often for millions of dollars.

There are many cases that are much less cloudy than this. For example, I am aware of one case where a woman, against the advice of her physicians, twice refused the only procedure that could have diagnosed her illness. When she finally consented to the procedure, she turned around and sued all the physicians previously involved in her care for not diagnosing her sooner. (Apparently physicians are not only expected to be superhuman, but are also expected to have psychic powers.) Two of the physicians settled out of court, even though they did nothing wrong. It is the money to be gained from settlements (many times millions of dollars) that has prompted lawsuits like these to be filed.

Last year, the Arizona Legislature passed a bill that would require a



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lawsuit to have an "affidavit of merit," presumably by a board of physicians and lawyers, in order to proceed. Hopefully this will help reduce meritless lawsuits.

What do physicians want? First, we want lawsuits to be pursued only if there is true medical negligence. Second, we want "expert witnesses" to be people actively practicing in the specialty in question, as opposed to the retired primary care physicians, who have been used for this in the past. Last spring, a measure was passed by the Legislature that would require this, which is good, as long as the law does what it is intended to do.

Third, we want patients who have been legitimately injured from negligence to be awarded reimbursement for all past and future costs resulting from the injury, including past and projected wages lost, in addition to the medical costs. We also want medical liability premiums that are reasonable and stable. As an allergist, my malpractice premiums for 2006 are around \$14,000, which is pretty low compared to other specialties. Neurosurgeons in Arizona

have to pay over \$125,000. What's more, the premiums are increasing every year.

For this reason, the local and national medical societies support putting a cap on noneconomic damages ("pain and suffering"). Plaintiffs are awarded millions of dollars for this, although in actuality they only receive approximately 30 percent of it; the rest goes to their lawyer and to cover the costs of "expert witnesses," etc.

Last year, Texas passed a \$350,000 cap on noneconomic damages, and liability premiums are already coming down in that state. It is true that such a cap in Arizona would require a constitutional change, which could only occur with the approval of Arizona citizens. The people who would stand to lose the most from such caps are the trial lawyers, who fund Hinz's organization.

The problem with our current medical system is multifactorial and won't be easily solved, but please rest assured that physicians don't want to take away patients' rights and are just as determined to reduce medical mistakes. They just want to be able to practice medicine the way it should be practiced, without the fear of unwarranted retribution and with compensation that takes into account the considerable costs of maintaining a practice and the debts owed for their medical education.

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