

NEW MEXICO INJURY ATTORNEY BLOG

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Hot Coffee and the Medical Malpractice Myth

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It seems that caps on medical malpractice claims are used for political capital by every stripe of politician. Most every political campaign will involve a call for medical malpractice caps even if only by token gesture. Even President Obama threw in a call for caps almost as an obligatory gesture to the crowd during his State of the Union speech. Naturally, everyone cheered enthusiastically.

It is unclear what they are cheering about. The cheering is particularly perplexing coming from the Tea Party. The fact is that medical malpractice caps, or caps on any personal injury claim, shifts the costs of negligence and wrongdoing to the taxpayer from the doctor, hospital, and most importantly the insurance company. This is of course by design.

Hot Coffee, the movie is premiering at Sundance Film Festival. The movie documents the gross mischaracterization of the McDonald's hot coffee case by the U.S. Chamber of Commerce and the Tort Reform movement to basically deny normal folks from access to the courts. It does not stop there, it documents the costs of Tort Reform to taxpayers with an emphasis on medical malpractice liability caps.

The movie documents one particularly sad case of gross medical malpractice that led to cerebral palsy of a newborn twin, Colin Gourley. The movie documents the devastating effect of the malpractice on Colin, his twin brother Connor, and the family. Though some in the political arena are not particularly empathetic toward the suffering of others, all those calling for deficit reduction might at least want to take note of the costs to taxpayers associated with the medical malpractice caps that led to an 80% reduction of the jury verdict for Colin.

It was estimated at trial that Colin's lifetime medical expenses for his cerebral palsy would be \$12.4 million. The jury awarded \$5.6 million to cover Colin's medical expenses. The Appellate Court knocked the verdict down to \$1.2 million which included other damages as well. This leaves a gap of millions for the lifetime care of Colin.

One might ask, what about private health insurance? The family had health insurance. Mr. Gourley lost his job and his medical insurance. Once he gained employment again, he was able to apply for medical insurance for his family. Naturally, the insurance company denied coverage to Colin due to his preexisting injuries.

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In sum, the insurance industry escapes financial responsibility for medical malpractice for which they charge astronomical premiums. Then at the other end, the industry escapes coverage for Colin through private medical insurance. The end result is that Colin will be a lifetime beneficiary of Medicaid and the insurance industry has effectively shifted their financial obligations, but not their profits, to the public. And Congress and the President cheer approvingly.

For more information on Hot Coffee, go to Democracy Now, where there is very good reporting on the movie as well as the Medical Malpractice Myth. Make no mistake, we have been duped by the Chamber of Commerce and the Insurance Industry. Judge for yourself once you know the true facts.

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