



## Tort Reform Would Remove Check on Medical Malpractice

Written On August 27, 2009 By [Bob Kraft](#)

My friend Herb Friedman has an excellent column in the [Lincoln Journal Star](#) saying that tort reform in medical malpractice claims would remove the checks currently in place on medical treatment.

Friedman states, "Malpractice amounts to less than 2 percent of health care spending, according to the Congressional Budget Office. The CBO has estimated that even a reduction of 25 to 30 percent in malpractice costs would lower health care costs only 0.4 to 0.5 percent." "Do not be misled. If the civil justice system is destroyed through 'tort reform,' there will be no check on misconduct and no compensation for those who are injured." Here is Herb's article:

This month, the health care debate has dominated the headlines. It is clear that our current system of health care is dysfunctional. Costs are spiraling out of control and proper health care is often beyond the reach of the average citizen.

Congress and the White House will have to sort through the mountains of facts and factions, and attempt to cure this social disease that is an embarrassment to the wealthiest nation on the planet.

While this debate is raging, those opposed to health care reform are again championing what they misrepresent as "tort reform." "Keep the lawyers out of the operating room" has been the battle cry in many sound bites.

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This issue should be placed into proper focus. Malpractice amounts to less than 2 percent of health care spending, according to the Congressional Budget Office. The CBO has estimated that even a reduction of 25 to 30 percent in malpractice costs would lower health care costs only 0.4 to 0.5 percent.

The National Center for State Court estimates that only 6 percent of state cases involved tort claims and of that amount only 3 percent of those cases involved medical negligence claims. A study done in Texas, a state with draconian malpractice laws, showed that from 2000 to 2006 the amount collected in premiums escalated by 120 percent while the amount paid for claims decreased by 14 percent. The Institute of Medicine's 1999 study estimated that the sixth-leading cause of death in the United States was preventable medical errors. William Sage of the University of Texas commented, "... The major problem out there is medical errors that are not compensated, rather than frivolous claims that are compensated."

Malpractice insurance companies have long taken the position that malpractice claims will be vigorously defended. The out-of-pocket expenses connected with these claims can reach \$50,000 in the blink of an eye. Few lawyers are willing or able to take these cases. No case is taken unless the damages are catastrophic and experts are willing to testify that providers have fallen below the reasonable standard of care. Of the few cases that are taken and actually end up in trial, the overwhelming majority result in defendants verdicts.

In Nebraska, there is a cap on damages for such cases, which is woefully inadequate. Many clients cannot find competent counsel because the cap is too low to justify the investment in the case. The Nebraska Supreme Court has even suggested that the cap might be unconstitutional.

And Nebraska is not alone; many states now have some type of limitation on medical negligence claims. The result has provided neither better medical care nor lower malpractice premiums. The Government Accountability Office, in a 2003 study, found that in non-cap states there were more physicians per 100,000 population than in cap states, and in fact the costs of malpractice insurance premiums were higher in cap states than in non-cap states. Go figure.

The insurance industry already has all but gutted the right of people to go to court if they are the victim of medical negligence. The idea is not reform but total destruction of the system that has been a vital part of our system of government since colonial days.

The civil justice system only provides access to the courts for wrongs committed. Judges and juries render the results based on law and evidence. It has provided a check on misconduct since the republic was founded. Civil lawsuits have forced Big Tobacco to compensate victims of smoking, Big Auto to make safer cars and Big Mac to stop serving coffee so hot it burns the flesh off of its customers. The system works well. The only complaint comes from those who have to pay for their misdeeds.

Do not be misled. If the civil justice system is destroyed through “tort reform,” there will be no check on misconduct and no compensation for those who are injured.

Shakespeare is often misinterpreted when Dick the Butcher in Henry the VI says, “The first thing you do is kill all the lawyers.” This famous remark by the plotter of treachery meant the surest way to chaos and tyranny, even then, was to remove the guardians of independent thinking, the lawyers.

Herb Friedman is the past president of the Nebraska Association of Trial Attorneys.