



Health Care and the Myth of Tort Reform

Written On September 22, 2009 By [Bob Kraft](#)

The St. Louis Post-Dispatch has an [interesting editorial](#) commenting on the recommendations of some politicians to make “tort reform” a part of any new health care legislation. Those of us who have spent years involved in the medical malpractice claims process and have read many studies on the subject understand that medical malpractice claims amount to a tiny percentage of health care costs. A bigger problem, and a better way to look at this situation, is the exorbitant insurance premiums charged doctors and hospitals by the major carriers. These premiums often have less to do with actual malpractice claims than with the profit or loss of the insurance companies’ investments in the stock market. Here are excerpts from the editorial:

Plenty of reasons exist to support medical malpractice reform. Doing it to slow the dizzying growth in health care spending isn’t among them.

Whatever form those projects might take, few economists believe tort reform by itself — even the most radical tort reform — would significantly reduce what Americans spend on health care. Most experts say the big reasons for high U.S. health spending are chronic illness, expensive new medical technology and an aging population. Lawsuits are far down the list.

The most authoritative estimates put the direct cost of malpractice litigation — insurance premiums, lawyers fees and awards to injured patients — at about 2 percent of overall health care spending. Premiums make up about half of that.

Even the most aggressive tort reform wouldn't save all of the direct costs. The biggest portion of malpractice settlements and jury awards are not for "pain and suffering" or punitive damages, but for actual damages — lost income and future medical treatment.

Meanwhile, insurance companies providing malpractice insurance are doing pretty well. Last year in Missouri, they paid out only \$1 in awards for every \$5 they collected in premiums. The number of claims in 2008 was the lowest in the 30 years.

In states that have enacted some measure of tort reform, including Missouri, which limited so-called non-economic damages in 2005, health care spending is rising just as fast as it is elsewhere. It hasn't declined in any state, no matter what legal reforms were put in place.

A 2006 report by the Congressional Budget Office found that there were no reliable studies that showed tort reform by itself reduced health care spending.

One point made by tort reformers is undeniably true: Some people awarded damages under the current system aren't victims of malpractice; they're victims of bad outcomes. Even with the best care, people sometimes die or suffer serious injuries. Those patients deserve sympathy, not compensation.

It also is true that many, if not most, victims of malpractice never file suit, often because the cost of bringing suit is more than what they could hope to recover. Those patients deserve compensation for their actual injuries.

Many opponents of Mr. Obama's reform plans point to tort reform as a kind of silver bullet to reducing health care costs. Like many of their claims, the facts don't bear that out.