

Tort reform - at what cost?

To the Editor,

Politicians, pundits and physicians are casting stones against individuals who seek help from the court system for substandard medical treatment. The prior campaigns of tort reform are reemerging on the heels of the recent midterm elections, and the controversial federal health care law. Proponents are once again championing limitations on medical malpractice cases as the solution to protect against increasing health care costs and a failing health care system.

So what is medical malpractice? Medical malpractice is a legal cause of action that affords individuals compensation to offset the harm sustained by substandard medical care. The types of harms vary but typically include serious injuries that forever alter a victim's life, or death. Medical malpractice cases seek to offset these harms through compensating the victim, and provide an incentive for medical providers to meet accepted standards of science ensuring the best possible results for their patients.

At first glance limiting this compensation in an attempt to save a failing health care system may seem sound policy, but it comes with unbearable costs. The foremost cost is the stripping away of the individual's constitutional right to a trial by jury.

Every Missourian has a constitutionally protected right to have a jury of their peers determine the merits of a medical malpractice case. This includes the ability to have the jury determine the extent of the harms caused by substandard

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designed to place the right to a trial by jury beyond the reach of hostile legislation.

The right to a trial by jury was also of the highest importance to the United States' founding fathers. In a recent Missouri Supreme Court case, Judge Wolff called attention to the remarks by founding father Alexander Hamilton. In describing the drafters of the United States' Constitution in Federalist Papers, No. 83, Hamilton stated "if they agree in nothing else, concur at least in the value they set upon the trial by jury." In evaluating the necessity of the right to a jury trial, Hamilton noted that some drafters regarded the right as "a valuable safeguard to liberty," while others considered it "as the very palladium of free government."

The campaign to place limits on medical malpractice cases invades the constitutionally protected right to a trial by jury by removing the jury's ability to determine the extent of the harms caused by substandard medical care, and the amount necessary to fully compensate those harms. This new call for tort reform cast in jeopardy the very safeguards of liberty and free government our founding fathers sought to protect in the Missouri and United States Constitutions. It is too great of a cost to exchange our constitutional freedoms for the popular rhetoric of tort reform and the economic gain of those championing the cause.

But, even if we are willing

97 percent of filed medical malpractice claims were meritorious. And of those, 80 percent involved death or serious injury.

Malpractice claims do not drive up health care costs. According to the National Association of Insurance Commissioners most recent analysis, in 2007 the total spent defending claims and compensating victims of substandard care was \$7.1 billion - just 0.3% of total \$2.2 trillion health care costs. In 2008 that number was reduced to \$6.2 billion.

Doctors are not fleeing the practice of medicine. According to the American Medical Association's statistics, since 1960, the numbers of physicians have grown twice as fast as the United States Population. Advocates of medical malpractice reform often argue the state of Illinois is the leading example of doctors fleeing due to an unfavorable litigation climate. However, the number of licensed physicians engaged in "patient care" in Illinois has never declined. Instead, Illinois has more doctors per capita than California, Ohio and Texas, states which have placed limitations on malpractice compensation.

Malpractice claims do not drive up doctors' insurance premiums. Researcher at the National Bureau of Economic Research reported that, "increases in malpractice payments made on behalf of physicians do not seem to be the driving force behind increases in premiums." Similarly, Americans for Insurance Reform conducted an analysis of the relationship between insurance payouts and premiums charged and found that, "[n]ot

investment." Additionally, an analysis by the American Association of Justice of the 2008 financial statements filed by the 10 largest malpractice insurers found that the average profits of these companies are higher than 99 percent of all Fortune 500 companies.

Medical malpractice reform will not lower insurance rates. Medical malpractice reforms are often passed under the guise they will lower physicians liability premiums. In 2009, the average liability premium in states without compensation limits were lower than the average premium in states with such limitations. In Texas, a state with very restrictive limitations, the opposite has occurred. Following the Texas's enactment of limitations, GE Medical Protective, one of the nation's largest medical malpractice insurer, announced a 19 percent increase in premiums.

Finally, the true solution lies not in tort reform, rather, insurance industry reform. In March, 2010, the American Medical Association, released a report titled Competition in Health Insurance: A Comprehensive Study of U.S. Markets. In this report, the American Medical Association states "[a]n absence of competition in health insurance markets is clearly not in the best economic interest of patients. The [American Medical Association] has urged the Department of Justice and state agencies to more aggressively enforce antitrust laws that prohibit harmful [insurance] mergers."

The present campaign of medical malpractice reform utilizes simple rhetoric that is

medical care, and the amount necessary to fully compensate the harms. This right is guaranteed by Missouri's Constitution of 1820. The drafters believed the right to a trial by jury was of such importance, they guaranteed the right "in-violate," or free from change. This express restriction was

to sacrifice constitutional freedoms, medical malpractice reform is not the answer. There are not too many "frivolous" malpractice lawsuits. In a study undertaken by the Harvard School of Public Health, one which analyzed over 1,400 closed malpractice claims, the authors concluded that over

only was there no 'explosion' in lawsuits, jury awards or any tort system costs to justify the astronomical premium increases that doctors have been charged in recent years. These rate increases were rather driven by the economic cycle of the insurance industry, driven by declining interest rates and

not supported by facts. We can not afford to sacrifice the right to a trial by jury to accommodate misguided political pressure.

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