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Caps on damages in medmal cases no solution in Florida

Commentary by Hector Lombana

Florida's health system could be — and should be — improved. But not through the imposition of caps on medical malpractice awards. Rather, it should be done through strict monitoring and discipline of healthcare providers that requires true accountability. The caps on damages in medical malpractice actions not only continue to negatively affect the injured patients but also the basic legal and constitutional rights of Florida's citizens.



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Many think that there are legitimate health-policy reasons for the existence of caps but statistics continuously show that medical malpractice payments make up only a small fraction of healthcare costs. Thus, it becomes apparent that caps on non-economic damages have a very limited impact and are definitely not a solution to the so called "healthcare crisis." Furthermore, arguments supporting caps in malpractice cases have now been invalidated by a Public Citizen study performed on Texas' legal system, which imposes strict limitations on damage recovery.

A system that does a better job of managing and disciplining its doctors in order to ensure quality medical care would better serve the healthcare system, and more importantly, the victims of medical negligence, rather than an arbitrary limitation on the legal rights of those injured.

Medical malpractice is the third highest cause of death in America. Although recent studies show that up to 98,000 people nationwide die each year from malpractice, only about two percent of the victims or their families will actually pursue an action. In Florida, there is no excessive medical malpractice claim crisis, since such claims have been dropping significantly every year.



But a different malpractice crisis does exist. And it is caused by increasing negligent care and the growing amount of money paid out by insurance companies and taxpayers to cover these healthcare costs. A 2009–2010 annual report released by the Florida Department of Health Division of Medical Quality Assurance reported that 30 percent of the cases presented to investigating panels resulted in probable cause versus; the prior year, only 21.5 percent. Yet very little effective discipline has been handed out to help stem this increase.

From the Texas example we can learn some valuable lessons regarding the impact of caps on the healthcare system, patients and taxpayers of our state. In 2003 Texas put a \$250,000 cap on non-economic damages recoverable from doctors in medical malpractice cases. Some thought that the actions taken by Texas would improve the medical system by lowering the cost of healthcare, lowering physicians' premiums and reducing spending on outpatient services. But the Public Citizen report, "A Failed Experiment: Health Care in Texas has Worsened in Key Respects since State Instituted Liability Caps in 2003," showed the assumptions underlying caps on damages are wrong. The report demonstrated how only doctors and insurance providers benefitted financially from the caps, leaving the injured victims with no recourse and the tax payers bearing the economic burden of the consequences of malpractice.

The study found that since 2003, Medicare spending in Texas, including spending for outpatient services, had risen at a faster rate than the national average. In fact, Texas rose from its ranking of seventh in the fifty states in 2003 to second in 2010

in Medicare spending. Not only did spending rise, but premiums for private health insurance rose faster than the national average. And, accordingly, the number of uninsured persons in Texas rose as well. Texans can rest assured knowing that Texas' title of the state with the highest uninsured rate in the country has remained intact despite the Legislature's mission to lower healthcare costs and make healthcare more accessible through caps on damages.

The report also demonstrated that physicians are not more likely to practice in a state with more aggressive caps. In fact, Texas' per capita increase in doctors grew slower than in the prior years, the number of physicians in "non-metropolitan areas" declined, and the per capita number of primary care physicians remained flat — even though it had shown great growth in the years before the institution of the caps.

So while Florida continues to impose caps on the recovery of medical malpractice damages, and the politicians push the interests of the citizens as their reason behind those caps, it may serve us well to heed the lessons of the Texas study. The imposition of caps serves only to take away the legal and property rights of those injured by medical negligence while creating the false impression that the public is being served by a better healthcare system. In the arena of caps on damages, there really are only two winners: malpractice insurance companies who reap the economic benefits and the negligent healthcare providers who, while benefitting financially, remain shielded from accountability.

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