

**Cut out frivolous malpractice suits**

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Doctors across New York State staged demonstrations Tuesday demanding action to halt the escalating costs of medical care and malpractice insurance. In doing so, they joined with their counterparts in several other states, including New Jersey, who have held similar protests.

The cause is right. In the world of doctors, prestige and dollars are being replaced by a growing professional liability. This legal cancer on doctors' lives must be excised.

Change must occur first in the courts and second in the hospitals. Doctors must be held responsible for their mistakes but should not have to face such a large number of frivolous lawsuits.

For starters, doctors should be repaid by greedy lawyers and gold-digging clients for hours wasted on frivolous lawsuits. And those attorneys who can't justify why they brought the lawsuits in the first place should be compelled to work off their efforts by providing a certain number of hours to charity malpractice cases.

In addition, tort laws should be revised to replace the contingency system, in which lawyers take a percentage of the award or settlement instead of charging upfront legal fees, with a fee-for-service system. Paying out of pocket for something is invariably a test of value. If the poor were taken care of with pro-bono legal help, a fee-for-service system could work and would make people think twice before suing.

Lawsuits should be made even more difficult to initiate by requiring a review by a panel of experts. Not only doctors, but scientists, social workers and even health care economists could test the legitimacy of a lawsuit before it is brought.

Capping the malpractice settlement amount for pain and suffering at \$250,000, as President Bush has proposed, would not sufficiently address the millions of dollars in settlements that are unrelated to pain and suffering. Furthermore, even if capping reduced overall costs, there would be no guarantee that the savings would be transferred to doctors. In California, where caps are in place, it took a separate law to force the rollback of insurance rates.

In the hospitals, discussions of errors - like the old mortality and morbidity conferences - are a somber ritual that should be reinstated. This will happen only in an environment that doesn't mandate punishment and where doctors regain the ability to be accountable for their well-intentioned actions. It would cost the system a lot less to discuss errors and regulate doctors than to crank up the million-dollar machinery of a lawsuit.

In addition, bringing mistakes out into the open would more effectively retrain physicians. Licensure and board certification are no guarantees of quality or even competence, but continual reassessment without attaching automatic punishment is a step in the right direction.

Policing doctors more appropriately means installing discerning regulatory bodies in the courts as well as in the hospitals. Simply put, accountability must take the place of expensive punishment.

Imagine an environment where ambulance chasers are a little poorer and the doctor reaching toward your preoperative chart is more relaxed.