

PERSPECTIVE

Public Policy Sense from the Bluegrass Institute

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File a frivolous lawsuit and call me in the morning

The refusal of Kentucky's policymakers to resist unreasonable judgments and gold-digging plaintiffs threatens the state's economic health, limits patients' choices and causes doctors to practice defensive medicine at higher costs. At least for those physicians who continue to practice.

Around 70 of Kentucky's 120 counties are now without a practicing ob-gyn. News reports indicate that those who do continue to practice face average annual medical malpractice insurance premiums of around \$65,000.

Refusing to limit non-economic damages and other risks faced by responsible physicians is a legal cancer eating away at the quality of care available especially to women across the commonwealth. Each time an ob-gyn moves out of the state or shuts down his or her practice, 140 Kentucky women are left without the valuable medical attention they need.

As of 2003, approximately 1,273 physicians had left Kentucky, many of whom – like ob-gyns – are specialists. The mass exodus is having a particularly damaging effect on residents of economically depressed eastern Kentucky, which already had an existing shortage of physicians.

Bills addressing the crisis were introduced in both the House and Senate died during the 2004 General Assem-

bly. The status of these bills remains uncertain at the present time.

Some hospitals in eastern Kentucky have stopped delivering babies altogether. Expectant mothers preparing to deliver their babies at Our Lady of Bellefonte in Russell County or Knox County Hospital now must travel two hours to Lexington to give birth.

Such developments have caused the American Medical Association to place Kentucky on its lists of "states in crisis." According to the U.S. Chamber of Commerce, only 15 states have worse liability systems than Kentucky.

According to Citizens Against Lawsuit Abuse, 76 percent of Americans believe that such lawsuits threaten access to quality health care while 74 percent describe the medical liability issue as "a major problem."

Leading lawmakers have expressed their concern about the nation's judicial system.

"We do not think anybody can stand up and defend the status quo of the litigation system in America," said Sen. Joseph Lieberman, D-Conn. "The average person on the street ... knows that lawsuits take too long; that people do not get justice in a timely fashion; that too much money goes to lawyers."

By Bobby E. Reynolds

Summary

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While politicians drag their feet, Kentucky's medical malpractice crisis worsens. Free-market reforms are needed to prevent a mass exodus of physicians from the state, which would greatly diminish the availability and quality of health care.

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Politicians are not the only ones to blame for an unsound medical malpractice policy. Kentucky's courts are not enforcing current law that would likely limit the malignancy of costly litigation.

For example, Rule 11 of the Kentucky Rules of Civil Procedure exists to prohibit "frivolous lawsuits" while Rule 56 allows for "weak" lawsuits to be weeded out of the system before being

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heard in court. Laws also are on the books requiring plaintiffs to solicit testimony from experts as evidence a physician is negligent.

It's unlikely that the state's courts will begin to enforce

these rules, despite the fact that doing so would eliminate many frivolous medical malpractice lawsuits.

In 1995, Texas began mandating that lawsuit plaintiffs have 90 days to file either a \$5,000 bond per defendant or a report from an expert qualified to comment on medical malpractice. If the report is not filed within 180 days, the case is likely to be dismissed and the bonds forfeited.

The impact of tort-reform legislation in Texas has been dramatic. The number of new malpractice cases has declined by more than a third in Harris County, Texas – the state's most populous jurisdiction.

Kentucky, too, can make progress in limiting the volume of frivolous lawsuits clogging our system by taking the

following steps:

- Establishing a medical review board to assess lawsuits before they are allowed to go to court.
- Cap awards for pain and suffering at \$250,000 and index for inflation.
- Allow limited punitive damages to only the most egregious cases.
- Require attorneys and parties responsible for the action to pay defendants court costs and legal fees.
- Reduce awards by the amount of past or future compensation plaintiffs may receive from other sources such as insurance companies or government funds.
- Pay future losses over plaintiffs' lifetimes. This would allow defendants to purchase an annuity or set up a trust fund determined by the settlement or verdict.
- Create shorter statutes of limitation while making discovery procedures in medical malpractice claims more stringent than those for other types of lawsuits.
- Limit the amount of fees that plaintiff's attorneys are allowed to collect.

Malpractice reform has worked in other states like Texas and California. It's needed in Kentucky, too.

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