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PERSPECTIVES

Insurance Reform – Not Malpractice Damage Caps – Will Work

Recently, the Arizona Medical Association abandoned efforts to cap medical malpractice awards at \$250,000. The decision was made after an AMA-commissioned survey showed that Arizona residents are unwilling to impose a non-economic damages cap. With all the talk of a medical crisis caused by malpractice litigation, would a cap have made any difference?

The studies say no. The question is important because doctors, lawyers, everyone, has an interest in accessible, quality medical care. There are problems with our current system, and given our aligned interest, it makes sense to find an effective and comprehensive solution. What analysis shows is that while caps do not help doctors or patients, meaningful insurance reform does work. We can attack the problem by making sure that doctors are fairly paid for their services by health insurance companies, that malpractice carriers set fair premiums, and that these insurance companies take reasonable, but not “windfall” profits.

Medical malpractice insurance, like most liability coverage, relies on returns on investments of premiums to cover expenses, defense costs and payments. Beginning in 1995, these returns on investments began to decline. These declines increased as the US economy entered a full-blown recession. As a result, insurers’ bottom lines became strained and premiums increased. The increases worked – for the insurance companies at least. In March 2004, *Forbes* reported that total profits for the top

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Choosing A Doctor

Choosing a doctor or hospital can be tricky. How can you be sure you are getting the best available health care for you and your family?

The first step is to check the doctor’s experience with other patients who have similar medical needs, age and condition.

The second step is to check your insurance policy. Some policies place limits upon where you can go and receive medical treatment. Whatever the coverage, you should nonetheless have choices. In making the choice, start by identifying your medical needs. Whether you seek a primary care physician or specialist, the doctors you consider should have received specialized medical training and experience in the field. The American Medical Association provides board certification in all specialties and one should always start by seeking a doctor who is so certified.

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Medical Malpractice, cont. from page 1

In March 2004, *Forbes* reported that total profits for the top ten U.S. insurance companies topped \$25 billion.

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The premium increases set off much nationwide debate on the "malpractice crisis." Doctors, it was reported, were being forced to leave the practice of medicine, and some

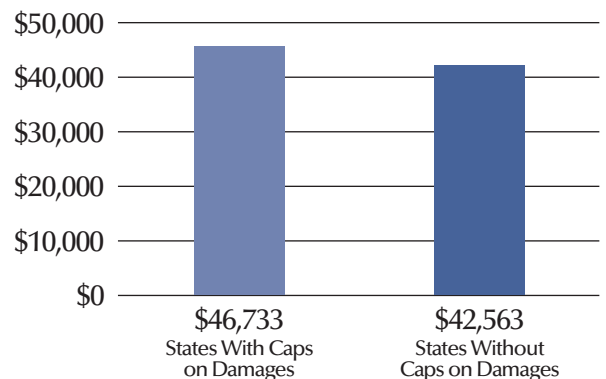
areas of the country were being left without access to quality medical care. But, according to the American Medical Association, the number of doctors has increased nationally, and in every state, since 1996. Nevertheless, great attention remains focused on the impact malpractice litigation has on insurance costs and physician compensation. Because nearly 100,000 people are killed each year by preventable medical errors in hospitals – more than twice the number killed in car accidents – if there is a quantifiable link between medical malpractice insurance and access to medical care, that link deserves analysis.

But malpractice costs amount to less than 2% of overall health care spending. Thus, according to a

costs – which could be assumed in a capped world – would reduce health care costs by only four-tenths of one percent, and therefore, the likely effect on insurance premiums would be comparably small.

Caps do not lower insurance rates.

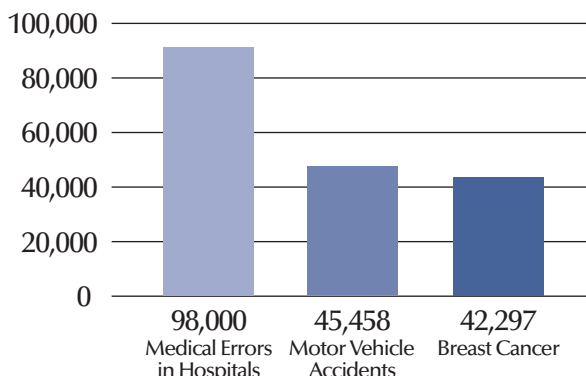
Average Liability Premium



Insurance premiums in states with caps are 9.8% higher than in states without caps.

Medical negligence is a serious problem.

Number of Deaths



According to the National Academy of Sciences' Institute of Medicine, up to 98,000 people are killed each year by preventable medical errors in hospitals — far more than die from motor vehicle accidents or breast cancer

A review of states with caps shows us that they do not lower insurance rates. Medical malpractice insurance premiums are 9.8% higher in states with caps than in states like Arizona with no caps. In fact, Dennis Kelly, an insurance industry spokesman, has plainly said, "We do not promise price reductions with tort reform."

California's experience is educational. The state passed damages caps in 1975. In 1988, California enacted comprehensive insurance reform regulating the calculation of premiums and requiring insurers to open their books to review. Premiums rose 450% between 1975 and 1988. It was only after meaningful insurance reform that premiums actually leveled.

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2004 report from the Congressional Budget Office, even a reduction of 25% to 30% in malpractice

"I thought my health insurance already paid for this?"

Have you ever gone to the hospital because of someone else's negligence, as the result of a car accident, for example? If so, sometime after your hospital visit, you probably received notice of a health care lien which said, "pursuant to this lien, the hospital must be paid for its services out of any and all proceeds received from any third party, payable under claims pertaining to this accident..." And in addition, "the hospital has priority for payment over all other health care providers." You may have thought to yourself, "What is this?" And more importantly, "I thought my health insurance already paid the hospital?"

In most situations, you would be absolutely right. Nevertheless, the hospital is attempting to collect additional funds through a practice called "balance billing." Hospitals engaging in this practice hope to collect the difference between what the hospital has agreed to accept from your health insurance company and what the hospital would like to collect had it not already negotiated preferential payment schedules with your health insurance company. Because these balance billing health care liens extend only to claims of liability or indemnity, this practice has, in effect, turned patients who are injured rather than ill into hospital collection agents. The hospitals rely on injured patients to bring indemnity claims against whomever they believe was the cause of their injury. If, and when, the patient secures a judgment against the defendant, the hospital demands a portion of that award. And since these liens are only enforceable against the party liable for the injuries, the patient will never see the indemnity proceeds unless and until the hospital's lien has been satisfied.

There is no question that hospitals, and their doctors and nurses, should be fairly compensated for the care and treatment they provide. If this is not happening, hospitals should reevaluate the payment schedules they

have negotiated with health insurers rather than strong-arm injured patients into paying twice. Hospitals argue that they are simply collecting their customary charge because Arizona law allows health care provider liens for "customary charges." The issue, however, hinges on the definition of a "customary charge."

Should the "customary charge" be the amount which appears on your bill, or the funds the hospital regularly collects for the service provided? I think that to say the charge reflected by a balance billing lien is the hospital's customary charge is the same as saying that the sticker price on a new car reflects the dealer's customary charge for that vehicle, when the truth is, no one ever pays sticker price.

It's an interesting issue. You decide what's fair and reasonable.

— Jessica E. Feingold

KBSDS in the Community



Jim Dyer has been chosen to serve as the next President of the Pima County Bar Association. The mission of the Pima County Bar Association is to provide service and leadership to the public and to the profession; to provide to all people of Pima County access to and awareness of the law, and to promote respect for and satisfaction in the profession. We congratulate Jim and look forward to the start of his term.



Bob Beal is the 2006 winner of the National Football Foundation and Collegiate Hall of Fame "Outstanding Contribution to Amateur Football" Award as a consequence of his 27 years of NCAA football officiating and the innumerable contributions he has made to the teaching and development of local football officiating crews over these three decades.

IN FOCUS

Organ Donation

In December of 2003, life was cut short for a remarkable young woman, Sarah Elizabeth Wintz. She was fatally injured in an automobile collision in the Ahwatukee Foothills, just outside Phoenix, by a speeding motorist. Although Sarah was only 17 when she passed away, she made remarkable contributions and left several important footprints. One of those footprints was Sarah's devotion and dedication to causes she felt strongly about. Although Sarah was involved and committed to many worthy causes, we would like to take the opportunity to highlight one which has the

potential to give countless others a new lease on life: organ donation.

There is a critical need for organ donors in the United States. Each day about 74 people receive an organ transplant; however, 17 people die each day waiting for transplants that can't take place due to the shortage of donated organs.

Anyone can be considered for organ and/or tissue donation, regardless of age or medical history. If you believe, as Sarah did, that organ donation is a gift of life, you must make your wishes about organ and tissue donation known. To do so, and for more information, visit www.organdonor.gov and www.azdonorregistry.org.

State Champs!

Elliott Mayfield was the star third baseman on the first Little League team I ever coached. He and my son, Matthew, were classmates and teammates in all sports from first grade through high school. Thus began a long and rewarding friendship between the Mayfield family and mine as well as a deep admiration and respect for the way Coach Mayfield always put his players and the development of their character ahead of all else on the gridiron. So it was that I watched with pride and disbelief, along with 10,000 other Tucsonans this past December, when Mayfield's Palo Verde football team

completed their surprising Cinderella season with a resounding victory in the State 4A-II Championship game in Arizona Stadium. A week later, my admired friend, Coach Todd Mayfield, called to tell me that most of his players could not afford championship rings and that the team had decided if one player could not afford a ring, no player would get one. KBSDS decided we wanted to do something about that. We were honored and thrilled to provide championship rings for all Todd's players. The dream of a championship ring is now a reality for the team that had answered Tucson's dreams with a most improbable state championship.

— Ted A. Schmidt



2005-06 PALO VERDE TITANS FOOTBALL



HOLIDAY GREETINGS

*Ted & Frim,
Thanks for helping
make this 2005
State Championship
season so special.
You all are
greatly appreciated
Be Believe Thank You
Ted*

Can Vitamin D Stop Multiple Sclerosis?

When I started law school 30 years ago, I never imagined that a substantial part of my career would be devoted to medical research. I gravitated to representing the victims of injuries, and that type of practice required medical research almost every day. I became the subject of my own research last summer when, at age 53, I was diagnosed with Multiple Sclerosis (MS). I've read hundreds of articles about every aspect of MS, and it appears that there is little that can be done to cure the disorder; however, there is overwhelming evidence which shows we may prevent MS from developing in our children by maintaining the proper level of Vitamin D in their blood. These are some of the facts I discovered which support this conclusion:

FACT 1

The incidence of MS increases the further you travel north, or south, from the equator. The rise in MS as you travel north or south from the equator is directly related to the availability of UVB (ultraviolet B) sunlight. Our bodies use UVB rays to manufacture vitamin D3. Less UVB sunlight means less vitamin D3, and less vitamin D3, particularly in children, means a higher incidence of MS.

FACT 2

Researchers have known for many years that humans acquire their "immunity" to MS prior to age 15.

FACT 3

In 1997, researchers at the University of Wisconsin – Madison, found that hormonal vitamin D3 (the kind of D3 our bodies produce) completely eliminated the incidence of artificially induced MS in mice.

FACT 4

A Harvard study analyzed data gathered from 90,000 nurses, and found that nurses who took 400 IU of vitamin D (or more) every day had a 40% reduction in the incidence of MS compared to the nurses who did not take vitamin D.

FACT 5

Medical literature points out that, as a society, we are not getting enough vitamin D to impact the incidence of MS. In fact, many physicians, scientists and nutritionists have stated that there is a worldwide vitamin D deficiency epidemic. For 3-6 months of the year (depending on where you live), there is not enough UVB sunshine for humans to make adequate vitamin D.

FACT 6

The U.S. government requires that milk be fortified with vitamin D; however, the amount of vitamin D found in milk and other fortified foods is inadequate to make up for the lack of UVB sunshine during winter months.

FACT 7

According to the Multiple Sclerosis Foundation, approximately 250,000 to 500,000 Americans suffer from MS, costing the United States approximately 20 billion dollars, annually.

I am not a doctor, but a preponderance of evidence shows that we have the potential, right now, to stop MS from affecting the next generation. Just as the polio vaccine controlled polio in the 1950s and 60s, it appears that "vaccinating" our children with vitamin D, until they are at least age fifteen, may prevent MS.

"Vaccination" for MS consists of sunshine, vitamin D supplements, and an occasional blood test – all under the supervision of your physician, and all designed to maintain the proper vitamin D blood level necessary to prevent and control MS.

The economic impact of MS on this country is indeed significant, but it is nothing, however, compared to the suffering of hundreds of thousands of individuals afflicted with the disabling effects of MS...a disease that we have the capacity, right now, to control, if not eliminate.

A preponderance of evidence shows that we have the potential, right now, to stop MS from affecting the next generation.

—Jim H. Dyer



Choosing A Doctor, cont. from page 1

It is also true that doctors and hospitals are rated and you can easily check their ratings on the internet. For example, the Arizona Medical Board has a website where you can check a doctor's ratings – <http://azdocinfo.com>. You can also check hospital rankings at www.healthgrades.com.

Once the list is narrowed, it is wise to check with the doctor's staff to determine the level of experience the doctor and his/her team has in the area which you seek treatment. Ideally, you are seeking a medical practice that has extensive experience with your health condition and likewise stays abreast of recent developments.

When choosing a doctor or hospital:

- ☒ Check your insurance coverage for limitations.
- ☒ Check the doctor's and hospital's rating.
- ☒ Check the doctor's specialty and certification and the hospital's accreditation.
- ☒ Check where the doctor has privileges to assure he can treat you at the hospital of your choice.
- ☒ Check the doctor's experience with your medical needs, age and condition.

Your first visit with your new doctor is all important. Pay particular attention to how you are treated. Does the doctor take adequate time to hear from you concerning problems you are having, your medical history and your questions? Does he or she place an emphasis on preventing further ailments or illnesses? Does he or she listen carefully, explain things clearly and treat you with respect, and encourage you to ask questions?

In short, you should always take the level of care in selecting your doctor and hospital that you expect from the health care provider in dealing with your health needs.

—Ted A. Schmidt

Supporting the Brewster Center

We at KBSDS believe that everyone deserves a safe and healthy life. Each year, the staff chooses a charity as the focus of its holiday giving. This year, once again, we chose the Brewster Center for Domestic Violence. We are proud to contribute to the Center's mission of social change and the protection of children and families who fall victim to domestic violence. Our donations will help support Brewster programs including their policy of turning no victim away.

— Sher S. Rhea



KBSDS staff...helping the Brewster Center help others.

Congratulations Sethi Family!



Dev and Olivia Sethi welcomed their son, **Bhodi Kumar Sethi**, into the world on Saturday, January 21, 2006. Big sister Sophia is excited to have a baby brother and new playmate.

Congratulations to the entire Sethi family.

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