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## Malpractice reform

It is now over 20 years since I first wrote about the medical malpractice crisis. Since that time many forests have been cut down and turned into ponderous legal briefs. Once struggling attorneys have built themselves sumptuous offices and vacation homes. Nurses, burnt out from lifting heavy patients, have started life over as paralegal assistants; and some doctors have sold themselves as so called expert witnesses to legal firms. Many of their colleagues meanwhile have suffered untold anguish and expense defending themselves against frivolous lawsuits. In one of the three cases brought against me in that period I had never even treated the plaintiff. Another suit was by an alcoholic claiming that his seizures after a binge at the races were due to a serum potassium concentration of 3.7 mEq/l. The third was by the estate of a cocaine addict dead from a hypertensive stroke.

More calamitous from a national perspective is that generations of doctors raised in this litigious atmosphere have grown up to regard defensive medicine as the natural way of doing business. They order expensive tests and admit patients to hospitals in droves to avoid being sued. These practices have been codified into guidelines and indicators that should drive anyone hoping ever to cut the cost of medical care to abject despair, though they have not stopped capricious juries continuing to make \$25m awards. The cost of all of this is incalculable, and eventually ends up being charged to the taxpayers one way or another. Yet lawyers and consumer groups have consistently opposed tort reform, as have Democrat lawmakers, not surprisingly considering that the trial lawyers have long contributed heavily to their campaign coffers.

Then in November the Republicans swept into power and began to make changes. They passed a reform bill in the House, as promised in their "Contract with America," but this is still languishing in the Senate. In Illinois, however, Republicans in the majority for the first time in decades swiftly passed a law setting a \$500 000 cap on non-economic "pain and suffering" awards and abolishing the joint and several liability doctrine by which everybody sued in a case is responsible for the total amount awarded. Hospitals are no longer liable for the actions of their non-salaried doctors; and doctors are not liable for their substitutes and consultants. Gone are certain provisions prohibiting defense attorneys from communicating with other doctors and allowing plaintiffs to manipulate cases by delaying them, dismissing them, and refileing again a year later. Plaintiffs now must divulge the name and address of the doctor certifying that a given suit has merit enough to be filed. Expert witnesses must be board qualified in the appropriate specialty and be spending at least 75% of their time in active practice, teaching, or research. As soon as the law was passed, the trial lawyers tried to have it declared unconstitutional but the courts rejected their appeal.

Elsewhere 30 other states have also passed some tort reforms and several have also imposed caps on awards. It will take years for insurance premiums to come down, because many lingering old cases remain to be settled. Although further challenges to these laws remain a threat and federal legislation may fail or be substantially watered down, the momentum is clearly in the right direction and the changes feel like a breath of fresh air.