

Defensive Medicine

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Throughout the presidential campaign, and especially after the Democrats put a trial lawyer on their national ticket, President Bush indicated that medical liability reform would be a top priority during his second term. Yesterday, in Mr. Bush's first trip of the new year, the president traveled to Madison County, Ill., which was named the country's top "judicial hellhole" by the American Tort Reform Association last year because of its reputation for large malpractice awards. We commend Mr. Bush's remarks, portions of which appear in the adjacent columns.

The American Medical Association considers at least a dozen states, including New York, face a crisis in the medical profession. In 2002, the American College of Obstetricians and Gynecologists labeled New York a "Red Alert" state, finding that 67% of the Empire State's OB-GYNs have been forced to restrict their practices - by, for example, no longer delivering babies or performing major surgery - opted to retire, or else relocated to another state. That same year, according to the Medical Society of the State of New York, seven of the top 10 jury verdicts nationwide in medical negligence cases were from New York courts. The average cost of closing all liability cases increased to \$420,000 in 2001 from \$337,000 in 1997.

"New York State's physicians have tremendous exposure in the area of medical liability suits. There's no doubt about it," the director of communications at the medical society, Thomas Donoghue, told us. "It leads to a clear escalation of the cost of health care and it leads to situations where a number of young physicians are leaving the state. ... They see the tremendous volume of frivolous litigation against doctors, and they take that into account when they decide where to practice."

In any five-year period, according to Mr. Donoghue, approximately 70% of New York's neurosurgeons and 60% of its obstetricians are sued. "This has absolutely no relation to their competence as doctors," he said. "It's a result of the litigious environment in New York State." Consequently, health care costs are on the rise and physicians' liability insurance premiums are skyrocketing.

New York physicians pay among the highest medical liability premiums in the country. Obstetricians in Nassau and Suffolk counties pay about \$150,000 a year. By contrast, an OB-GYN in California - which in 1975 enacted a cap on noneconomic damages - pays about \$57,000.

New York has already adopted joint liability reform for noneconomic damages, but no cap on awards. As a consequence, jury awards greater than \$1 million are three times more frequent in New York than in California, according to the Insurance Information Institute. New York's average jury award increased to \$6 million in 1999 from \$1.7 million in 1994.

We'd much prefer that any liability cap in state courts be imposed at the state level. That would let the states compete to be the most attractive place to practice medicine. The import of Mr. Bush's speech yesterday is the prospect that if the states do not act of their own accord, the federal government will, using its huge leverage over state healthcare policy through Medicare and Medicaid, and using Mr. Bush's own power to set the agenda, as he did yesterday.