

TORT REFORM: Statistics, Solutions and Strategies

Michael J. Schoppmann, Esq.
Kern Augustine Conroy & Schoppmann, P.C.

As the battle intensifies over the issue of tort reform, both on a federal and state level, certain statistics leap to the forefront of any debate:

- In the year 2000 alone, more than 633 million dollars in medical malpractice payments were made in New York, far and away the highest in the nation.
- New York's medical malpractice payment rate is 80% higher than the second highest state, Pennsylvania (where tort reform is a leading issue for state government).
- Physician shortages are increasing across the state, restricting availability and access to services such as obstetrical and radiological care.

So, where do we turn for solutions? A good start (and it's only a start – no reform is either perfect or all-encompassing) is the basic elements of both the proposal put forward by President Bush and the proposed bill before the New York Legislature:

- A limit of \$250,000 on awards for non-economic damages
- A reasonable structure for the awarding of punitive damages
- Setting standards for credentialing and qualifications of medical expert witnesses

While none of these reforms will bring about an end to some of the societal aspects of the tort crisis (a nationwide glut of attorneys, runaway juries, anger at restrictions in healthcare, etc.) they are a critical first step. In fact, the United States Department of Health and Human Services projects that adoption of federal tort reforms would provide enough savings to pay for both a federally funded prescription drug plan for Medicare and provide coverage for the uninsured. On a more local level, the insurance industry had projected that adoption of such measures could bring about as much as a 26% reduction in malpractice premiums.

It should also be stressed that none of the proposed reforms or bills would place any restriction on a patient's right to sue. Moreover, none would place any restriction on a patient's right to sue. Moreover, none would place any restriction on a patient's right to seek any amount of economic damages resulting from medical negligence, no matter how large those damages are proven to be.

So, what are the strategies to bring these measures to fruition? Quite simply, get involved and get involved now. Inform the families of each and every patient you treat that their care is being compromised by this crisis. Their doctors are leaving the State of New York. Their obstetrician is no longer delivering babies. It is their mammogram that will take weeks to schedule, and so forth. Have them write to their representative, call their representatives' offices, or complete a post card/fax mailer of support.

It's an easy choice; we can either create an environment which strengthens our health care system for ourselves, our families, our friends, our neighbors and our nation, or we can coddle a broken legal system that continues to jeopardize your ability to provide quality health care.