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Inside Track

UM booster on the bay

Last Monday, the Miami Herald gave the University of Miami a major boost. It published an editorial endorsing a UM-backed bill to bar medical malpractice lawsuits against the university's medical school, its faculty and staff, and other medical educators operating at public and private teaching hospitals around the state.

UM has sought for years to shield its medical school faculty doctors from liability when they practice at the public Jackson Memorial Hospital in Miami. But this year, it appears that UM's effort has a real shot. The Republican-sponsored bill has been approved by a House and Senate committee, and may be considered by the Senate Judiciary Committee this week.

Problem is, the Herald's argument included an erroneous statement about a key provision of the bill. According to the editorial, plaintiffs who sue teaching hospitals that have agreed to a set of patient-safety standards would be limited to recovering \$150,000 in noneconomic damages. "Claimants would continue to be paid for actual damages and economic loss," the editorial stated.

Actually, according to the plain language of the bill, total damages, not just noneconomic damages, would be capped at \$150,000 per patient and \$300,000 per incident. That's a big difference. There's currently no limit on economic damages against private medical providers like UM and its faculty doctors.

A UM spokeswoman confirms that the Herald editorial was wrong on that point.

Last Thursday, a brief Herald news article accurately reported on the cap provision, though the newspaper has

published no detailed article on the bill.

On Friday morning, Miami plaintiff attorney Stuart Ratzan, who is scheduled to go to trial next month in a malpractice case against UM and a faculty anesthesiologist, sent the Herald a proposed op-ed column pointing out the error and problems with the bill.

But in an interview Friday, Herald editorial page editor Joe Oglesby said no one had told him about any errors in the April 18 editorial. He said the statement about the cap in the editorial was drawn from a meeting with a group of UM officials, including UM President Donna Shalala and medical school dean John Clarkson.

According to Oglesby, the UM officials said the \$150,000 cap applied only to noneconomic damages.

When told that a UM spokeswoman had confirmed that the editorial was wrong on that point and that



Stuart Ratzan, a plaintiff attorney in a malpractice case against UM, pointed out the editorial's error.

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MIAMI HERALD

The Miami Herald | EDITORIALS

UM's good idea: patient-safety plan

OUR OPINION: MALPRACTICE PROGRAM WOULD BENEFIT ALL CONCERNED

Last year the Legislature rebuffed the University of Miami's request for limited immunity against malpractice claims when the Senate rejected a House bill that supported the idea. This year UM is trying again — with a much-improved plan. It deserves approval by both chambers.

This time UM has joined with five other Florida teaching hospitals in a novel approach to reduce soaring malpractice claims. The hospitals would commit to a safety program that reduces medical errors and improves patient protection. The idea is a win-win for both sides — hospitals and patients. It is an innovative plan that would benefit all.

Malpractice claims cost UM more than \$40 million per year, an unsustainable level.

They belong — on the institution. By reducing the number of potential targets for lawsuits, the proposal has the added benefit of simplifying and speeding up claims. This carries obvious benefits for both sides.

High cost It stands to reason that with an institutional or team approach to identifying and fixing errors — rather than finger-pointing blame and delaying cases

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A Miami Herald editorial backing the bill barring medical malpractice lawsuits against UM's medical school was in error, according to a UM spokeswoman.

the Herald news pages had reported differently, Oglesby said, "If there is an error, we will correct it. But I haven't been told by anyone there is an error."

Asked whether the editorial board might reconsider its position given its misunderstanding of the bill, Oglesby ruled that out. "The editorial is based on the fact that there will be a safety program in place that these universities will adhere to," he said. "It is the safety program that is the central fact."

But there's a problem with that, too. According to the bill, private teaching hospitals, medical schools and doctors would enjoy this unprecedented sovereign immunity protection even if they did not comply with the patient safety requirements of the bill.

Evidence of noncompliance would not be admissible in a malpractice lawsuit.

Asked about that, Oglesby said his understanding is that UM already has spent millions of dollars to comply with the proposed patient safety rules. He did not respond to questions about the merits of granting this immunity even in cases where the hospital and doctors violated the rules.

In response to these questions, Oglesby accused a reporter of having a "closed mind" on the issue. But officials of the Academy of Florida Trial Lawyers, which strongly opposes the bill, say the Herald editorial board never contacted them to hear their position before publishing the editorial. Oglesby did not answer questions about that.

Ratzan is waiting to see whether the Herald will publish his op-ed piece, which calls the Herald's editorial "both faulty and conceptually inaccurate." In his upcoming malpractice case against UM and its doctors, Ratzan is representing Berto Valdes, 54, a privately insured blue-collar worker who underwent surgery at Jackson Memorial in 2002 for a benign tumor on the back of his head. He's now a paraplegic.

Ratzan claims that a UM faculty anesthesiologist and a UM resident physician unplugged the blood pressure monitor and allowed Valdes' blood pressure to sink dangerously low, leading to a spinal cord infarction.

A UM spokesman declined comment on the case.

Valdes, Ratzan said, will require \$20 million to \$25 million in medical care alone for the rest of his life. If the UM immunity bill passes, injured patients like Valdes will have to turn to the taxpayers for costly care and support.

"Under this bill," Ratzan said, "it's not the person who caused it who's responsible. It's you and me." ♦

— Harris Meyer