

Commentary

Vengeance at work

August 18, 2003

BY: Stuart Ratzan

The recent medical malpractice debate in Florida politics exposed motivations of anger and revenge as opposed to a quest for sound public policy. In 2002, Gov. Jeb Bush vowed to the Florida Medical Association, which has little love for lawyers or our system of justice, that he would “whack the trial lawyers.” For Bush, the malpractice debate was never about public policy. It was always about political vengeance. Unfortunately for Florida, political vengeance creates hideous public policy. Though the Florida Senate attempted to stand up to Bush, the law is the ugliest of compromises. It will hurt everyone — doctors, lawyers, patients — except the insurance industry.



Over the past year, medical malpractice insurance companies, reinforced by vengeful doctors and a vengeful governor, created the perfect storm for getting their way in Tallahassee. First, insurers raised premiums to exorbitant levels, thereby manufacturing an insurance crisis for doctors. Then, the insurance industry justified its rate increases with the myth that malpractice awards were at an all-time high, juries were out of control, and trial lawyers were to blame. Rather than challenge these myths, doctors accepted the insurance industry claims and feverishly lobbied politicians and the public for damage caps and other immunities. The insurance industry cleverly manipulated the vengeful passions many doctors — including most who lead the Florida Medical Association — have toward lawyers and the jury system.

In reality the number of malpractice claims has decreased in the last 10 years. The average amount of money awarded in settlements to injured patients has decreased over the last 10 years. More doctors obtained Florida licenses last year than any year in recent memory. Declining stock and bond markets were the only source of financial trouble for insurers over the last several years. The insurance industry admitted these truths in sworn testimony before the Senate. Most striking of all, the insurance industry admitted, in sworn testimony to the Legislature, that the damage cap will not lower insurance premiums.

Not bothered by the facts, the Legislature and the governor enacted a law that caps noneconomic damages at \$500,000, with some catastrophic exceptions reaching \$1 million in claims against doctors. The law further caps noneconomic damages at \$150,000 in claims against emergency room doctors. And the law expressly permits insurers to recklessly handle malpractice claims, thereby exposing doctors to gross financial ruin, during the first 210 days of any malpractice case.

This new law does nothing to help doctors. They expended all their political capital, failed to get the \$250,000 cap they wanted and, instead, lost their legal rights. Premiums will stay high, just as the insurance industry testified. Gov. Bush lost credibility because he blinked when the Senate confronted him over his insistence on a \$250,000 cap. The Legislature lost because four special sessions and tireless bickering made the Legislature look wasteful and inept. Lawyers lost because the law means fewer cases and smaller fees.

But patients lost the most. Now that negligent medical care has fewer consequences than ever, feeling safe in the hospital is as unlikely as receiving full compensation for medical malpractice.

If you want to know how absurd and misguided this new law is, consider this: The law now places greater financial liability on nurses than it does on doctors. Indeed, a registered nurse incurs a maximum financial exposure of \$1.5 million, while a doctor is capped at a maximum of \$1 million. We are therefore demanding better care from nurses than we are from doctors.

According to the Institute of Medicine, as many as 98,000 Americans die each year from medical malpractice. Deaths from preventable medical errors exceed the number of deaths each year nationwide

from motor vehicle accidents, breast cancer and AIDS. Medical malpractice occurs 10 times more frequently than the court system ever knows. Harvard University's comprehensive analysis of medical malpractice in the United States shows that of all instances of medical malpractice, only one in 10 patients ever initiate a claim. Despite the epidemic nature of medical neglect, the number of malpractice claims in our court system has decreased in the past five years.

What Florida needs is better medicine through more accountability, not less. A good law would cap insurance premiums, not the legal rights of injured patients. In his quest for vengeance, Gov. Bush delivered Florida one of the most dramatic corporate welfare programs ever designed for a group of Florida corporations. The Bush policy of political vengeance is wrong for Florida. We have a right to rational public policy. We have a right to much better governance from our governor.

— Stuart Ratzan

Stuart Ratzan is a trial lawyer and co-founder of **Ratzan & Alters**, a Miami law firm that handles medical malpractice, product liability, wrongful death, catastrophic personal injury and complex commercial cases. He is a member of the Academy of Florida Trial Lawyers' board of directors.