

HONOLULU ADVERTISER

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LETTERS TO THE EDITOR

State Insurance Commissioner J. P. Schmidt claims that preventing medical malpractice is not the solution to the malpractice problem. Instead, he claims that the answer is reducing the rights of patients injured and killed by medical malpractice. He is wrong. In medical malpractice, as in other aspects of medicine, prevention is worth a pound of cure.

Schmidt claims that reducing patient protections like California did in 1975 will eliminate the malpractice problem and reduce insurance rates. It will not. The Southern California Physicians' Insurance Exchange, California's second largest malpractice insurer, recently stated under oath: "While MICRA (tort reform) was the legislature's attempt at remedying the medical malpractice crisis in California in 1975, it ***did not*** substantially reduce the relative risk of medical malpractice insurance in California."

In Texas, limits on patient rights advocated by Schmidt have an insignificant effect on insurance premiums. The Medical Protective Company, a subsidiary of the nation's largest malpractice insurance company, actuarial study of those proposals found: "Non-economic damages are a small percentage of total losses paid. Capping non-economic damages will show loss savings of 1% . . . When applied to premium rates, the savings will be even less."

Hawaii required a mandatory 20 – 25% premium reduction when it instituted automobile insurance reforms in 1998. There is no premium reduction at all required in Schmidt's malpractice proposal. This is because he knows there will be no significant impact on insurance premiums based on experiences in California and Texas.

Schmidt cites to problems with emergency room care and claims that malpractice insurance is the "No. 1 problem." He is contradicted by the state's own study "On-Call Crisis in Trauma Care: Government Responses," issued just last month which found that there are many reasons for the shortage of doctors willing to help with emergency room treatment. The study confirmed that "damage caps on non-economic damages do not significantly and systematically reduce overall awards." It did not find that tort reform was the solution, but rather warned: "However, evidence on how premiums were affected is mixed and findings are at best inconclusive."

The Advertiser's recent article, "Isles Headed for Healthcare Crisis (2/13/06)," examined the same issue of doctor shortages in neighbor islands, rural areas and hospitals. The primary factors contributing to the crisis, according to doctors, were reduced medicare-medicare reimbursement rates, high cost of caring for the elderly,

patients who cannot pay their bills, and compliance with increased regulations. Malpractice was not even mentioned as a factor, let alone the “No. 1 problem.”

The No. 1 problem and No. 1 solution to the malpractice problem is reduction of malpractice in the first place. The American College of Emergency Physicians rate the quality and patient safety of emergency care in Hawaii a dismal D+. The Joint Commission on Accreditation of Healthcare Organizations found heart care in Hawaii sub-par in 16 of 20 areas. Hawaii’s medical board is rated dead last in the nation in pursuing disciplinary action against doctors and has been at or near the bottom for the past 10 years.

Serious malpractice was thought to be rare until a 1999 Institute of Medicine study revealed the serious and widespread threat faced by patients. Current medical studies estimate that up to 100,000 – 200,000 people are killed and a million injured by preventable malpractice every year. The Institute of Medicine made simple recommendations to study and identify medical errors, learn from past errors, raise safety standards and implement safer medical practices. The Institute noted that past studies on malpractice did little to motivate doctors into making needed safety changes and issued a call to action, stating:

To Err is human, but errors can be prevented. Safety is a critical first step in improving quality of care. The Harvard Medical Practice Study, a seminal research study on this issue (widespread preventable malpractice), was published almost ten years ago; other studies have corroborated its findings. Yet few tangible actions to improve patient safety can be found. Must we wait another decade to be safe in our health system?

The key to reducing the malpractice problem is to reduce malpractice, not reduce patient rights. It is time to take action to improve patient safety. That it is better to avoid unnecessary injury and death in the first place, which in turn will naturally result in lower claims payments and insurance premiums is a no-brainer. It is the only win-win solution for doctors, patients and society.

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