

PERSPECTIVE

## Tort reform bad medicine Wyoming

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R. Michael Shickich,

The proposed "tort reform" Constitutional amendments are bad medicine for Wyoming. They will not reduce the amount of money doctors pay to insurance companies for malpractice insurance. But they will result in the loss of Constitutional rights to Wyoming citizens. Wyoming citizens would not allow the government to take away their right to bear arms, or the right to freedom of speech and religion. Why then is there now an effort to strip a right as basic as the unfettered jury trial? One thing history has taught us, once rights are taken away, they are not given back.

Set forth below, are some facts about doctors and lawsuits you may not know:

*FACT: Amending the Constitution will not result in lower insurance costs for doctors.* How do we know this? Because the insurance companies themselves have told us this. This year one of the medical malpractice insurers decided it would hence forth only write policy for doctors in its home state of Ohio. When asked why it was leaving Wyoming it said its departure had nothing to do with tort reform or a cap on damages. It had to do with the business cycle of the insurance industry. Similarly, in testimony before the Wyoming Joint Labor Health and Social Services Committee, insurance industry representatives admitted that placing a monetary cap on non-economic damages will not cause them to lower medical malpractice premiums.

*FACT: Lawsuits in Wyoming are not the cause of doctor's high insurance premiums.* In fact, doctors in Wyoming are rarely sued. Lawsuits against doctors make up less than 1 percent of all the cases filed in Wyoming.

*FACT: Wyoming juries are conservative and reflective of our conservative values.* Think of the hundreds and thousands and tens of thousands of medical procedures that are performed each year in Wyoming. Yet, through 1989-2002 there were only 33 lawsuits filed against doctors that went to trial. Of those 33 lawsuits, the doctors won all but five, and of those five that were lost, none were million dollar verdicts. The fiction is that Wyoming doctors are subject to crazy jury verdicts. The fact is, we do not have "runaway" jury verdicts in Wyoming, and doctors are not subjected to high verdicts.

*FACT: Lawsuits are not causing doctors to leave the state.* In 2003 alone, according to the Wyoming Board of Medicine Licensure, 64 new doctors moved into the state to provide primary direct care. Thus far, in 2004 there has been an increase from 799 to 819 doctors licensed to practice direct patient care in Wyoming. This is a net gain of 20 doctors just this year. Over the last 12 years, according to the board, doctors have moved into the state at 3 times the rate at which our population grew. In other words we had a 33 percent increase in the number of doctors licensed to provide direct care in Wyoming, while at the same time our population grew by only 10 percent.

*FACT: The so-called Constitutional amendment swallows the rule.* The proposed constitutional amendment places limits on the financial responsibility of healthcare providers. This is so, even if the healthcare provider intentionally and knowingly does wrong. Casper citizens who have been reading the news know that a certified nurses' assistant, Tito Gonzales, recently plead guilty to sexually assaulting female patients at the Wyoming Medical Center in Casper. Yet, under one of the proposed constitutional amendments it is arguable that he would be eligible for special protection and limitations in the amount of money he would be required to pay in a civil trial. He could claim he was a "healthcare provider." Even worse, the amendment does not define who or what is a healthcare provider. This means, anyone who has so much as placed a band-aid on another person could claim they too need not take personal responsibility for their actions, because they too are a healthcare provider.

FACT: *Knowledge is power.* When looking closely at this issue one cannot help but come away with the suspicion that Wyoming doctors are paying high premiums to offset the losses which the insurance companies are experiencing in other states. In other words, the insurance companies are price gouging Wyoming doctors. For a 21 year period, the OHIC insurance company received \$73,975,234 in premiums from Wyoming doctors. Concurrently, for a nine year period the Doctor's Company received \$22,643,433 in premiums. Regardless of how you feel about jury awards, one thing is clear, during this period there is no way that jury awards, settlements, and all the other related costs in medical malpractice suits amounted to \$96,239,577. Instead, this is money, which flowed out of the state to these insurance companies. Wyoming needs to quit looking outside Wyoming to solve Wyoming's problems. Rather than having doctors and lawyers point the fingers at each other, perhaps it is time that they join

together and collectively create a state funded insurance company to compete with these national insurance companies.

FACT: *Get rid of the middle man.* Wyoming doctors need to control their own destiny. The problem is with the insurance industry and the solution is with creating competition for the insurance companies. The ground work for this is with an insurance "actuarial study." This is a type of statistical analysis, which analyzes the economics of insurance coverage. This could be done for as little as \$50,000. In our last legislative session, Wyoming had a budget surplus of over 1 billion dollars. Let's come up with the money to do an actuarial study that allows us to see what, if any, alternatives are out there.

FACT: *Doctors are entitled to the fair market value of their services.* Fundamental to the notion of American free enterprise is that parties are entitled to be paid for the services they provide. Do you find it ironic that this "tort reform debate" focused on providing an economic bonus to the insurance industry? The insurance companies make an arm's length transaction to provide insurance coverage. They contract to provide \$1 million in coverage, yet they want an economic protection that would require they pay only \$250,000 00 even though they have charged premiums and made the agreement to provide for a million dollar coverage. In other words, insurance companies would get an economic windfall. Yet, the doctors, nurses, and healthcare providers of our state who provide the medical services do not get a similar economic incentive. They provide a wide array of services under "medicare" and "medicaid" to a wide range of our population. Far from getting any economic incentive,

they are consistently underpaid for the governmental services which they provide. Meaningful reform requires dealing with the amount and manner in which medicare and medicaid are billed and paid.

FACT: *Mistakes really do happen.* According to a Harvard study, medical and pharmaceutical errors rank as a leading cause of death and injury in America. Such errors kill up to 98,000 hospital patients each year. According to the recent University of Cincinnati study, medical errors by family physicians occur in almost one quarter of all patient visits. There needs to be better self-policy within the medical profession. Thus far, the debate is about changing the Constitution. There are many things short of that, which would help achieve a solution.

FACT: *Think outside the box.* Here are a couple of ideas that have worked in other states, and which have great potential in Wyoming: A rate stabilization plan, a doctor owned medical insurance company with the initial money coming from the state itself, a risk retention group, a physician self-insured program with state guarantees, or lastly, bidding out the entire line of insurance to the most favorable bidder. Let's explore these solutions before parting with a right as fundamental as an unfettered jury trial.

In short, the "tort reform" currently being discussed is about increasing the rights of the insurance industry by limiting the right of an individual citizen to a jury. That diagnosis, combined with changing our Constitution, means bad medicine for Wyoming. Wyoming's heritage is about justice for all. Tort reform is about justice for some.

*R. Michael Shickich is a Casper attorney and is past-president of the Wyoming Trial Lawyers Association.*