

# Excessive jury awards endanger medical system

By Newt Gingrich

In early July, the only medical trauma center in a vast region that includes Las Vegas shut down. Soaring malpractice-insurance costs had forced so many surgeons to resign at the trauma center of University Medical Center that it simply could not function. The trauma center reopened 10 days later, but still has fewer doctors than before.

Trial lawyers are at the heart of this calamity, which is not unique to the Las Vegas trauma center — or to Nevada. Personal injury lawyers are earning up to 60% of jury medical-malpractice awards that regularly top \$1 million — often, doctors suspect, because jurors frustrated with today's health-care system take it out on them. As a result, doctors' malpractice-insurance rates are skyrocketing.

Caps on pain-and-suffering awards, such as those rushed through in Nevada, are a step in the right direction. But to be fair to all sides, often-complex medical cases need more: a new health-court system. The judges of these courts either would have medical training or be non-practicing doctors, so they could knowledgeably challenge illegitimate claims by lawyers for either doctors or patients.

The American Medical Association reports that 12 states — including Texas, New York, Florida, Ohio, Pennsylvania, Oregon and New Jersey — are in serious danger of doctor shortages because of rapidly rising malpractice-insurance premiums. While trial lawyers are reaping enormous benefits, doctors are being forced to abandon patients in desperate need of care. Ultimately, everyone pays for the increases in malpractice insurance, because doctors' costs are passed to patients.

Fear of litigation has a dramatically negative effect on costs, productivity and patient care. Concerns about being sued can cause doctors not to report legitimate mistakes. This prevents other doctors from learning from those errors, possibly leading to needless suffering or death. Fear of creating a record that could be used against them keeps some doctors from providing a written diagnosis or

from using e-mail to respond to their patients' questions. Doctors also may practice defensive medicine, ordering more tests or procedures than medically justified to try to protect themselves.

Courts should provide reasonable recourse to patients who have suffered due to malpractice. But they also should defend doctors who have acted professionally against the root of their problem: lawyers. To do this, we need a new system of medical justice.

One solution is to let medical experts decide malpractice cases. We already have specialized courts, such as patent courts and family courts, which deal with custody issues. A few states have courts that focus on mental-health and treatment issues. Their goals are to divert mentally ill misdemeanor offenders to treatment programs rather than jail when appropriate. Similarly, in states with drug courts, judgments are based on medical considerations,

not just legal ones.

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In a health-court system, judges with medical expertise could objectively determine whether legitimate malpractice has occurred. Trial lawyers would not be able to manipulate the emotions of qualified and knowledgeable judges, as they now do with jurors.

Doctors who have not acted improperly could be confident that judges who understand complex health issues would decide their cases. Patients who are dissatisfied with the outcomes in a health court could take their cases to a civil court, but they would have to present the findings of the health court to a civil jury.

Doctors should not be forced to flee their medical practices because of the spiraling cost of malpractice insurance caused by outrageous jury awards and frivolous lawsuits. Patients should not have to travel dangerous distances to receive medical care, or perhaps not receive care at all. A system of health courts could help everyone in America — everyone, that is, except greedy lawyers.

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