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Without strong liability reform

Patients, doctors remain at risk

By CHRIS PATTERSON

For 25 centuries doctors have taken the Hippocratic Oath, vowing to keep patients "from harm and injustice (and work) for the benefit of the sick."

But flaws in the legal system are making it increasingly difficult for doctors to abide by these words. Caring men and women are forced to abandon the healing art, leaving sick patients without access to care.

Just how important is it for Texans to get medical care when they need it? How much do Texans value good quality medical care? These questions will be decided in the next few weeks as the Texas Legislature completes debate on House Bill 4, legislation designed to protect and improve the quality of medical care.

Every Texan needs to know that today there is a chance no doctor will be immediately available to take care of a severely injured child or a critically ailing parent. Care may be hundreds of miles and many hours away — a potentially deadly delay.

Doctors are eager to heal, but for many, our legal system is making it too difficult, too risky and too expensive to practice medicine.

This critical condition is worsening, jeopardizing the health of every Texan.

Lawsuit abuse is driving physicians out of Texas, and out of the profession. Medical facilities are cutting services. Physicians and hospitals are burdened with the sky-high — and still growing — costs of insurance they must buy to protect themselves against lawsuits. Over just the past three years, insurance premiums for physi-

cians have increased by 200 percent.

The cost of medical malpractice insurance is a direct result of the vast number of lawsuits that have been filed, expenses in defending physicians, and huge jury awards to a small number of patients and their lawyers for non-economic damages that are highly subjective.

Far too many meritless lawsuits are filed against physicians today in Texas. The likelihood a physician will be sued for malpractice almost doubled between 1996 and 2000. Today, up to 50 percent of physicians throughout Texas (depending on the region and who does the counting) have malpractice suits filed against them.

While most medical lawsuits in Texas are dismissed without any payment (even though defense costs still average \$23,000 per lawsuit), the amount of money awarded to patients by juries finding wrongdoing has increased 500 percent in just over 10 years. The average award is \$2.1 million — most of this money is awarded for "mental suffering" and other noneconomic losses.

The specter of a personal injury lawyer stands between every patient and physician in Texas, undermining the quality of medical care. The threat of unreasonable lawsuits compels physicians to treat every patient as a potential lawsuit.

Defensive medicine, medically unnecessary treatment ordered only to shield physicians against lawsuits, is experienced by Texans half of the time they seek care. About 75 percent of physicians worry that defensive medicine is harming the quality of care they offer. But they are afraid to practice medicine any other way.

Fear of unreasonable lawsuits is also preventing physicians and hospitals from improving the quality of health care. Today's legal jeopardy discourages medical professionals from identifying past errors and working together to create better ways to serve patients.

Caught in the middle of the legal battles is the patient. Doctors do make mistakes and should be held accountable when it happens. But too often patients and their families are the biggest losers in the lawsuit lottery run by personal injury trial lawyers.

All Texans need better care and greater access to care. But it will not come until physicians, medical facilities and all health care professionals are protected from unreasonable and financially devastating lawsuits.

A cap on noneconomic damages, limiting the amount juries

can award for pain and suffering, has proven successful in 10 states and most particularly successful in the five states that set strong caps at \$250,000 dollars. California pioneered caps in 1975.

There, doctors are not leaving, insurance premiums have risen more slowly, and patients are fully empowered to pursue their rights in the civil justice system.

The Texas Legislature must act now to protect patients and doctors, or we risk losing even more of both.

Chris Patterson is director of research for the Texas Public Policy Foundation. She is lead author of "Critical Condition," a new report examining the medical liability situation in Texas. The report can be found at www.TexasPolicy.com.