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New CPR White Paper Takes on Myth of ‘Defensive Medicine’ as a Significant Driver of Medical Malpractice Insurance Premiums and Health Care Costs

Authors Say Defensive Medicine’s Impact on Overall Costs is Slight

Washington, DC ----- Proponents of medical tort “reform” have argued that the practice of “defensive medicine” is what’s driving the increase in health care costs, forcing up doctors’ medical malpractice insurance premiums as insurance companies cover the costs of supposedly sky-high jury awards. A new white paper from the Center for Progressive Reform dismantles this argument, noting that the actual cost of defending malpractice suits and paying injured victims is estimated at less than 0.3 percent of all health care spending.

“Tort reform proposals aren’t about reducing the cost of health care,” says CPR Member Scholar and report co-author Sidney Shapiro in releasing the report. “They’re about increasing insurance companies’ profits. The industry’s campaign, backed by conservatives on Capitol Hill and in state legislatures around the nation, has already limited the constitutional rights of malpractice victims in 37 states, including Texas and California, imposing caps on how much victims can recover in court from negligent doctors. If it’s had any significant effect on malpractice premiums in those states or the cost of health care, it’s not apparent.”

The white paper charges that the insurance industry and its allies have used “defensive medicine” as “a politically expedient straw man, allowing policymakers and the insurance industry to ignore or obscure the real drivers of rising medical costs, including the high costs of prescription drugs; the high demand for, and increasing use of, state-of-the-art technology; the growing incidence of chronic diseases; and an aging population that lives longer and consumes more medical care.”

Shapiro and co-authors Thomas McGarity (CPR Member Scholar), Nicholas Vidargas and James Goodwin (CPR Policy Analysts) argue that:

- **Empirical evidence shows that litigation has a negligible effect on medical practice, and tort reform does nothing to rein in health care spending.** Studies show that if aggressive civil justice restrictions could reduce malpractice premiums by a full 10 percent, the savings would equate to just slightly more than one-tenth of 1 percent of total health care costs. As a benchmark, health care expenditures have grown at a rate between 3.6 and 6.5 percent per year over the last four decades.
- **Tort “reformers” include in their definition of defensive medicine procedures performed for reasons unrelated to litigation.** Doctors have multiple motivations to order procedures,

including maintaining a good doctor-patient relationship, the influence of advertising on patient demands, family pressure, financial gain, and the simple availability of technology.

- **Preventable medical errors are the real health care crisis, killing an estimated 98,000 Americans annually, injuring more, and costing the health care system \$17 to \$29 billion each year.** Caps on malpractice awards and restrictions on access to the courts remove one of the most powerful incentives for safe, quality care.
- **Perhaps because of all the attention given to tort reform proposals, physicians greatly overestimate the prevalence of lawsuits and verdicts against them, leading them to support tort reforms that will have little impact on their medical malpractice premiums.** In fact, the vast majority of victims of malpractice do not sue, and of those who do, most have a valid claim. Recent research shows that medical malpractice claims have been in steep decline for more than ten years. Another recent study shows that tort reform also has almost no impact on physicians' fears of litigation, so even severe restrictions will do nothing to change their views of the civil justice system.

The authors conclude that,

Restricting lawsuits might save doctors a negligible amount on malpractice premiums, but the vast majority of any savings will most certainly line the pockets of the insurance companies demanding these restrictions. On the other hand, buying into this myth has very real and dangerous consequences. Allowing civil justice opponents to pretend that constraining the civil justice system equates to meaningful health care reform distracts us from doing the things that must be done to fix the system, including avoiding the 98,000 deaths caused by preventable medical errors every year and reducing the unacceptable number of uninsured Americans.

The report is part of CPR's ongoing [Truth About Torts](http://www.progressivereform.org/torts.cfm) series, available online at <http://www.progressivereform.org/torts.cfm>. *Defensive Medicine and the Unsupported Case for Medical Malpractice 'Reform'* is available online at http://www.progressivereform.org/articles/MedMal_Myths_1203.pdf.

— 30 —

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