



Post 9/11 Statue of Liberty Reopens

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Will \$250,000 make a person 'whole'?

Iowa doctors have recently busied themselves, not taking care of patients, but seeking to limit the rights of their patients by lobbying for a \$250,000 cap on quality of life (non-economic) damage awards in medical malpractice lawsuits.

These physicians have been led to believe that such a cap will take the pressure off liability insurance premiums and thereby keep doctors in Iowa. Proponents carefully avoid asserting that caps will actually reduce premiums because there is no empirical or anecdotal evidence to support it. Last year, Florida legislators asked insurance executives to testify under oath that a damage cap in medical negligence cases would reduce premiums. The executives conceded that the cap would not necessarily result in lower premiums for doctors.

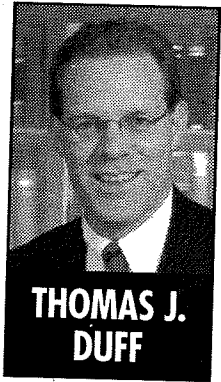
This is really not surprising, as proponents of damage caps and tort "reform" candidly admit that such measures do not reduce premiums. Sherman Joyce, president of the American Tort Reform Association, has stated: "We wouldn't tell you or anyone that the reason to pass tort reform would be to reduce insurance rates." The American Insurance Association also conceded that "Insurers never promised that tort reform would achieve specific premium savings ..."

California is perpetually cited as the shining example of how imposing caps on quality-of-life damages lowers malpractice premiums. However, the lesson learned from California is that insurance rate regulation rather than damage caps achieves the desired result. After damage caps were imposed in

California, rates actually increased. It was not until California voters passed Proposition 103, which prohibited premium increases greater than 15 percent without a public hearing, that rates declined and stabilized.

The U.S. General Accounting Office recently released a study that found that several factors contributed to recent increases in malpractice premiums. Those factors include lower investment income for insurers, lack of competition in the malpractice insurance market and rapidly rising reinsurance rates. The GAO found that of the seven states surveyed, Minnesota had the lowest premium increase, and it has no damage cap.

The Iowa Medical Society supports an arbitrary \$250,000 cap on quality-of-life damages, arguing that patients will nevertheless be made whole. A damage cap of any kind is simply antithetical to being made whole. A jury that has heard all the facts and evidence is in the best position to decide what is fair and what makes a person whole. A damage cap takes that power away from the jury and puts it in the hands of a legislator who arbitrarily decides what is fair, regardless of the facts or circumstances. Doctors have nothing to fear from Iowa juries, which historically have awarded large verdicts in tort reform, recently found Iowa juries the fairest in the country.



THOMAS J. DUFF

The cap on quality-of-life damages advocated by the Iowa Medical Society would unfairly penalize non-wage earners and low-wage earners, such as children, retired persons and stay-at-home parents. As a general rule, these people earn little, if any, income, which means their economic damages (lost wages) are zero. A stay-at-home parent who sustains catastrophic permanent life-altering injuries at the hands of a negligent doctor would never be able to recover more than \$250,000. This is true even if the parent could never again maintain the home, care for the children or simply enjoy a life free of pain. Do Iowa doctors really think \$250,000 makes this person whole?

The best approach to this problem is to first reduce the number of medical errors. The vast majority of Iowa doctors are skilled professionals who provide high-quality health care. Unfortunately, there are a few rotten apples in the barrel who drive up the premium costs for the good doctors. Iowa doctors, not to mention their patients, would be well served by improving ways to identify problem doctors and stop them from practicing. Iowa doctors should also press for legislation, like California's Proposition 103, that requires the insurance industry to justify rate increases. □

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Passing the buck

Overcoming a negative is never easy, especially if it means taking more money out of taxpayers' pockets. But that's only one reason a proposed state constitutional amendment requiring a referendum on major tax increases is a bad idea. Here are more reasons it shouldn't survive the required second go-round in the 2005 legislative session:

It's quixotic to think everyone takes the time to understand how increasing state taxes might improve education or leaving them static might compromise it, to think like state budget officials and do deep analyses of fiscal issues. If citizens depend on the news media to sort it all out for them, they will be bitterly disappointed. There is a growing disconnect between the information citizens need — how far the Department of Human Services is falling short of meeting its needs, or the Department of Public Safety or any number of state agencies whose payroll and budget demands increase proportionately with societal problems — and what the media are feeding them. News organizations are aggressive when it comes to shining their flashlights on controversies, but in general, they sacrifice in-depth stories explaining the mechanics of government funding as they respond to the public's preference for stories that entertain as well as inform.

Those factors combined make the prospect of a truly informed vote by citizens unrealistic, a fact Republican legislators who backed the proposed amendment and pushed it through the Iowa Senate are fully aware of. They confirm it every time they go back to their districts and explain that the media's version of a legislative action didn't accurately or fully portray what happened.

The call for a referendum on tax increases serves politics more than it benefits Iowa citizens. It holds state agencies hostage and potentially paralyzes the state's growth opportunities. For example, if the DHS were dependent upon a tax increase to hire more



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