



**RICHARD ANDERSON**

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## Medical crisis is sweeping the nation

**F**or Californians, the malpractice liability crisis sweeping across the nation is a case of *déjà vu*.

In the mid-1970s, the story in California was much the same as it is today in a number of states spiraling into crisis. Obstetricians faced a growing number of lawsuits, huge malpractice premiums, and the devastating decision of whether to close their practices — just like in Wyoming today. Non-profit clinics vital to the community were unable to afford insurance and shut down, just as they now are in Pennsylvania. In Northern California, doctors walked off their jobs, just as physicians in West Virginia, Florida, New Jersey and elsewhere have.

Today, California faces significant health challenges to health care delivery but the cost of protection for malpractice liability is not one of them. Physicians in California pay malpractice premiums that are about one-third what many Wyoming doctors pay and are among the lowest in the nation. Injured patients receive a greater share of their awards, and they are receiving their settlements one-third faster than the rest of the country.

California doctors no longer fear losing their practices because of high malpractice premiums. They therefore perform less defensive medicine, saving millions of precious dollars that would

otherwise be drained from our health care system.

Wyoming has one advantage unavailable to California 28 years ago. It has a proven package of reforms to look to as a model to solve its problems.

California forged new ground when it enacted the landmark Medical Injury Compensation Reform Act of 1975. MICRA directly addressed “jackpot justice” by placing a \$250,000 cap on non-economic (“pain and suffering”) damages while not limiting awards for economic losses or medical bills. It also limited attorney contingency fees on a sliding scale to ensure that injured patients — not lawyers — received the lion’s share of awards.

Opponents of caps often cite dubious studies that imply that the average award is relatively small and therefore shouldn’t have an impact on premiums. But what they fail to mention is that in nearly four out of five malpractice cases nationally, the lawsuit is found to be without merit.

There is still a significant cost that must be factored into premiums for defending doctors in these cases. The Doctors Company, which writes insurance in every state and serves approximately 28,000 physician policyholders, has spent over \$400 million since its inception in defense of doctors who were fully vindicated.

Still, the biggest problem is that the cost of the most expensive claims has exploded in a manner that is absolutely unprecedented. In just one year (1999–2000), the median malpractice award claim jumped 43 percent nationally from \$700,000 to \$1 million. Between 1996 and 2000, the proportion of jury awards exceeding \$1 million in malpractice cases increased from a third of all awards to more than half. The average jury award has now increased to about \$3.5 million dollars, with about 57% of that going to attorneys’ fees.

There is a clear correlation between skyrocketing awards, the consequent premium increases and diminished access to care. A handful of juries may feel that they are sending a message, but the reality is that they are dealing

a devastating blow to the availability of health care in their states. Women and the poor are often the first to lose care.

Wyoming and other states in crisis have a decision to make: They can limit awards for non-economic damages fairly — without capping economic damages such as lost wages and medical costs — or they can allow unlimited awards. But insurance is not magic: If the chosen path is unlimited awards, the premiums needed to pay for those judgments must increase accordingly.

California led the way in malpractice liability reform more than a quarter-century ago, and it’s a success story that can be imitated. California proved that it is impossible to sue your way to better medicine, but that it is possible to protect the rights of individual injured parties and access to quality care for all patients.

MICRA’s reforms brought sense and stability to the system in California, just as they can to Wyoming. Ultimately, effective reforms will allow doctors to practice medicine, not politics, and provide the best possible care for their patients.

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**Richard E. Anderson, M.D.**, is an oncologist and chairman of The Doctors Company, a national medical malpractice insurer.