

## OPINION

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# Capping malpractice awards won't help

TO THE EDITOR:

Caps upon the pain and suffering and the loss of quality of life of victims of medical malpractice are not a legitimate solution to the recent insurance rate increases (*Doctors leaving*, August 23). Caps only unfairly discriminate against those patients who have been injured the most seriously, or those too young or old to show an economic loss from their injuries. Does an arbitrary cap of \$250,000 sound fair for a child, elderly parent or stay-at-home mom who has been rendered permanently disabled from malpractice but is unable to show a loss of income?

In California, which has such a cap, victims of medical malpractice have had difficulty in retaining attorneys to take their cases because malpractice cases are difficult, time consuming and expensive to litigate. Moreover, in states that do have caps, malpractice insurance rates have continued to rise. The malpractice carriers have never stated that caps will reduce rates. In New York, attorneys in malpractice actions already have sliding scale "caps" on their fees. For example, the fees are capped at 25 percent and reduced to 10 percent of any part of an award over \$1.25 million. New York also requires that victims of malpractice have their potential cases reviewed by a physician, and an attorney must file an affidavit verifying that he has done so and that the action is meritorious. There is absolutely no incentive for any attorney to file a "frivolous" medical malpractice action as they would earn no legal fee when it was eventually dismissed.

By placing such minimal caps on a victim's potential compensation for their pain and suffering and loss of enjoyment of life in addition to the already imposed legal fee cap, the courthouse doors will clearly close for good for many legitimate victims of medical malpractice. This is exactly what the malpractice insurance companies would like to see. Malpractice can affect every one of us, not just "the other guy." Do we really want to follow the insurance companies down this slippery path? The reality is that over 80 percent of doctors have never paid a cent in malpractice payouts, while 5 percent of doctors account for over 50 percent of all payouts. Clearly if the Office of Professional Medical Conduct did a better job of identifying, disciplining or removing the "bad" doctors there would be no need for premium increases.

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