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Presentation by the
Iowa Association for Justice

to the
Iowa Legislative Medical Malpractice Study Committee
October 29, 2013

co-chairs
Senator Robert Hogg and Representative Chip Baltimore

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"IAJ...Protecting Rights and Righting Wrongs"

**Iowa Legislative Interim Study Committee Presentation
Medical Malpractice Study Committee
Iowa Association for Justice
October 29, 2013**

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I. Certificate of Merit

a. Unconstitutional in multiple states

In June of this year the Oklahoma Supreme Court ruled in *Douglas v. Cox Retirement Properties, Inc.* that the state's newly enacted "certificate of merit" law is unconstitutional. The court called the requirement "an unconstitutional burden on accessing the courts."

This should come as no surprise. Other courts have ruled these certificates unconstitutional. In 2009, the Washington State Supreme Court struck down the state's "certificate of merit" law in the case of *Putnam v. Wenatchee Valley Medical Center* saying it, "unduly burdens the right of access to courts" and violates the separation of powers. High courts in Arkansas and Ohio have made similar rulings, all reasoning that the laws interfere with access to courts or violate precepts like "separation of powers" or "equal protection."

b. Costly, unnecessary regulation

So-called certificates of merit would hinder patients who have been seriously injured by medical negligence from discovering and documenting evidence they need to make their cases in court. This proposal is completely unnecessary for Iowa. It creates an unwarranted level of bureaucratic red tape and it does nothing to reduce dangerous and costly medical errors.

Under current Iowa law, an injured patient's attorney is already required to name a medical expert, within 180 days of filing suit, who will testify at trial that the defendant(s) violated the applicable standard of care. If an attorney fails to meet this requirement the case will be dismissed. And if an attorney does file a truly meritless case then he/she is subject to sanction, can be ordered to pay the defense legal costs, and could even lose his/her law license (Rule 1.413). Iowa has numerous approaches to stave off meritless lawsuits, and they work.

Injured patients already face an enormous costs barrier to pursuing a case in court. Much of this cost is associated with fees for expert witnesses. Certificates of merit would only add to this cost burden.

A new certificate of merit bureaucracy would thwart many legitimate medical negligence claims and do absolutely nothing to make patients safer. A recent study published in the *Journal of Patient Safety* found that more than 210,000 people die every year because of preventable medical errors. The best way to cut down on malpractice lawsuits is to eliminate these errors, not limit the rights of people who have been injured.

II. Expert Witness Limits

a. Excess litigation costs

Information provided later in this packet will show that the number of medical malpractice case filings in Iowa has been steadily declining over the last several years. A large contributing factor to this decline is the cost of litigation – it is simply far too expensive for some injured patients to bring suit against the negligent medical care provider(s), unless the injuries are especially egregious.

One of the largest costs associated with a medical malpractice action is the expense of expert witnesses, but not necessarily the plaintiff's own experts. The injured patient and his or her attorney have a measure of control over their own expert witness costs – they can decide who the expert is, where the expert comes from and how many experts they decide to call to testify at trial. Due to the fact that a vast majority of medical malpractice cases are taken on a contingency fee basis, the injured patient's attorney is fronting the costs for these fees with no guarantee as to when, or if he/she will be paid. Most plaintiffs attorneys will call as few expert witnesses as possible so as to keep the costs down for their client.

It is routine, however, for defense counsel to hire far more experts in most cases. Then, if the plaintiff wants to depose those witnesses prior to trial in order to determine what their testimony will include, the injured patient must incur those costs. Not deposing the witness would put them at a huge tactical disadvantage, therefore attorneys are loath to take the risk of not deposing the witness in advance. Limiting the number of expert witnesses each side is allowed to call would lead to much lower litigation costs and a level playing field.

b. Unlevel playing field

Imagine watching a sporting event where one team was allowed to have three more players than the opposing team. Obviously, that would be unfair. That is a situation that injured patients and their attorneys find themselves in everyday across Iowa when it comes to medical malpractice actions. Defendants and their insurance companies routinely call several more expert witnesses in a medical malpractice case, simply because they have the financial resources at their disposal to do so, while the plaintiffs do not. Juries undoubtedly look at such a situation and wonder if the plaintiffs' cases are in some way deficient because they do not have as many experts testifying on their behalf. As argued above, limiting the number of experts that can be called by each side to an equitable number will not make it easier to sue, but will make it far more equitable for those who do.

III. Deadly Preventable Medical Errors on the Rise

a. Preventable medical errors now third leading cause of death in US.

Here is a recent essay published in *Forbes* magazine by Leah Binder, President & CEO of the Leapfrog Group, a national nonprofit that rates hospital quality and safety.

Stunning News On Preventable Deaths In Hospitals

By: Leah Binder

*In 1999, Americans learned that 98,000 people were dying every year from preventable errors in hospitals. That came from a widely touted analysis by the Institute of Medicine (IOM) called *To Err Is Human*. This was the "Silent Spring" of the health care world, grabbing headlines for revealing a serious and deadly problem that required policy and action.*

As it turns out, those were the good old days.

*According to a new study just out from the prestigious *Journal of Patient Safety*, four times as many people die from preventable medical errors than we thought, as many as 440,000 a year.*

Back in the old days, the IOM experts had very little concrete information to use in estimating the extent of killer errors in hospitals. But with innovations in research techniques led by Dr. David Classen, the Institute for Healthcare Improvement and others, we now have more tools to tell us where the bodies are buried.

With these latest revelations, medical errors now claim the spot as the third leading cause of death in the United States, dwarfing auto accidents, diabetes and everything else besides Cancer and heart disease. Harvard's Dr. Lucian Leape, the father of the patient safety movement and one of the experts behind the original IOM report, says the numbers in this new study should supplant the IOM estimates from 1999. That means hospitals are killing off the equivalent of the entire population of Atlanta one year, Miami the next, then moving to Oakland, and on and on.

These people are not dying from the illnesses that caused them to seek hospital care in the first place. They are dying from mishaps that hospitals could have prevented. What do these errors look like? The sponge left inside the surgical patient, prompting weeks of mysterious, agonizing abdominal pain before the infection overcomes bodily functions. The medication injected into a baby's IV at a dose calculated for a 200 pound man. The excruciating infection from contaminated equipment used at the bedside. Sadly, over a thousand people a day are dying from these kinds of mistakes.

If you aren't alarmed enough that our country is burying a population the size of Oakland every year, try this: you are paying for it. Hospitals shift the extra cost of errors onto the patient, the taxpayer and/or the business that buys health benefits for

the infected patient. My nonprofit, which provides a calculator of the hidden surcharge Americans pay for hospital errors, finds most companies are paying millions or even billions of extra dollars for the cost of harming their employees.

And our estimates are likely conservative. A study a few months ago in the Journal of the American Medical Association found that employers paid \$39,000 extra every time an employee suffered a surgical site infection. That's enough money to create a good job. Instead, it's rewarding a hospital for creating an infection.

Hospital industry leaders will tell us that reducing errors is extremely difficult because hospitals are complex places with very sick clientele. To prevent errors every person who works in the hospital has to follow rules precisely, and systems have to function properly.

These leaders are correct; it is hard for hospitals to be safe. But there's little excuse for this record of abject failure, and the misery and death of millions. In the dozen years since the IOM report, a plethora of research and case studies have emerged with proven strategies for improving hospital safety. The hospitals that put a priority on safety and use these proven techniques show results, and their patients are safer. Those that minimize the importance of patient safety kill more of their patients. As a result, in our Hospital Safety Score program grading hospitals on the extent of their errors, we see enormous variation, with some hospitals showing real progress while others — often in the same region or neighborhood — riddled with errors, many of them deadly.

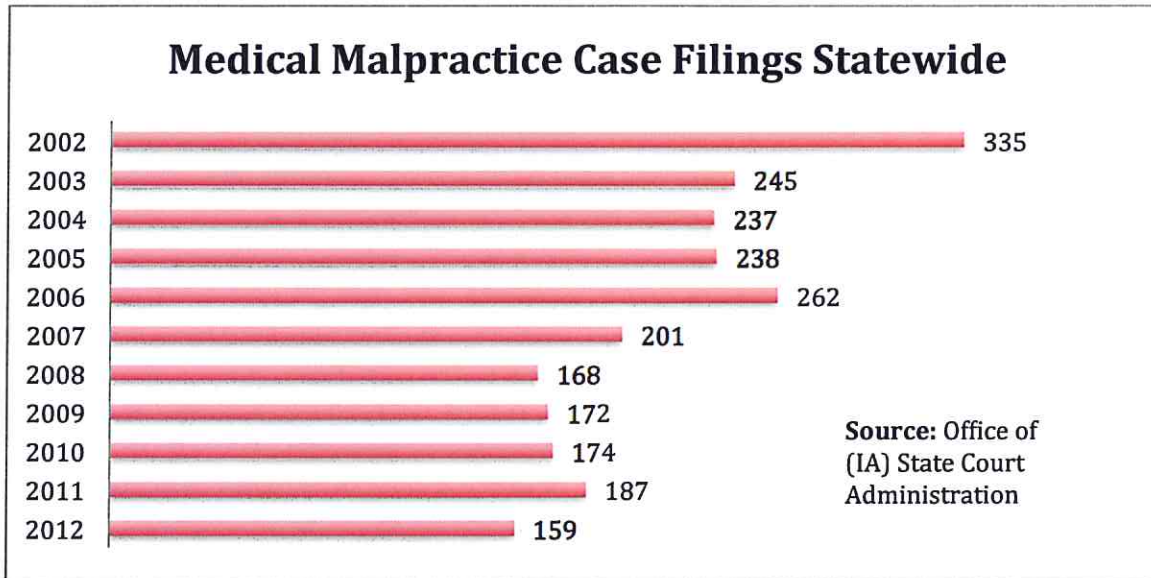
The reason many hospital leaders fail to put a priority on safety is that we as a country haven't forced them to do so. On the contrary, we haplessly pay them for these errors. We tolerate hospital lobbyists insisting on hiding their error rates. We fail to insist on safety when we choose where to seek care or when we put together our business' health benefits. When we don't demand safety, they don't supply it.

It's time for Americans to make clear to hospitals that they must earn our business, and our trust, and we will not pay with our lives for their failure to act.

IV. Liability Climate in Iowa

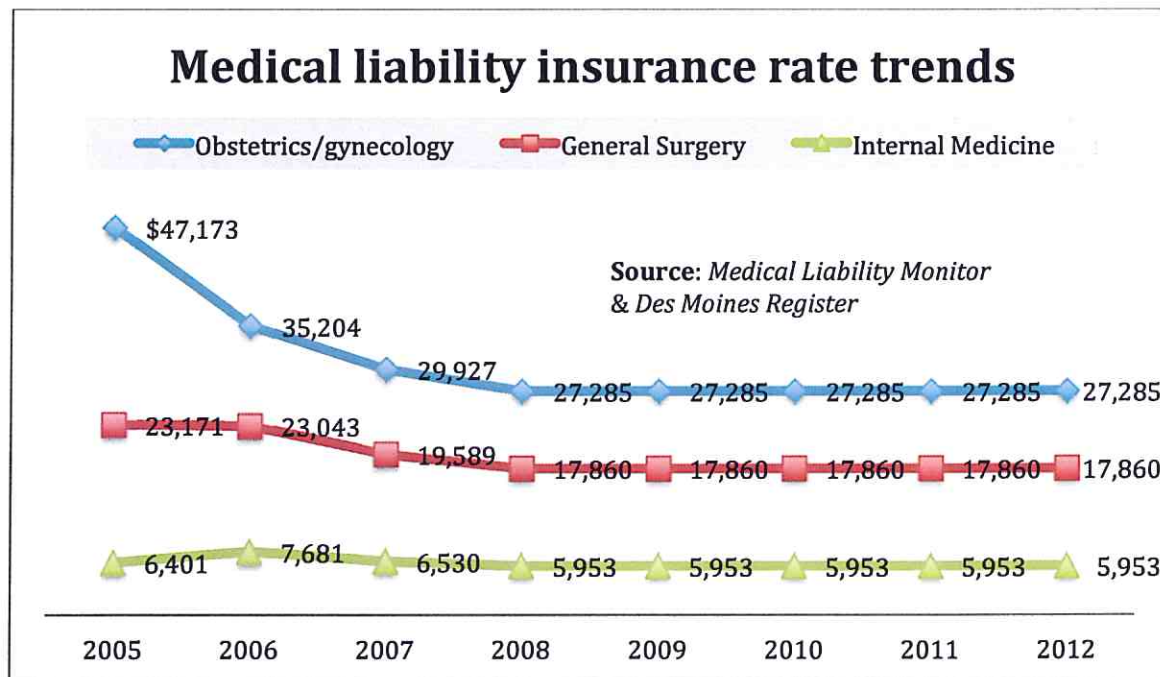
a. Medical malpractice case filings

Over the last decade case filings for medical malpractice lawsuits have dropped by half. See the graph below for the trend in total medical malpractice cases filed statewide each year.



b. Medical liability insurance rate trends

Premiums charged by Iowa's top medical malpractice insurer, MMIC, have held steady for five years after declining earlier. Here are base MMIC premiums for Iowa doctors in three specialties:



As you can see Iowa medical care providers face very few actual lawsuits, and their liability insurance rates are among the lowest in the country.

The Iowa Medical Society (IMS) touts this fact on its physician recruitment website, www.practicewithliving.org. IMS writes:

According to Medical Liability Monitor, Iowa has some of the lowest liability rates in the nation. The statistics tell it all - Iowa has an excellent liability climate...

c. UI College of Medicine survey

Governor Branstad and others have claimed that Iowa's liability climate has hindered Iowa's ability to recruit and retain medical care providers. The evidence shows that the exact opposite is true. That's why the editor of the *Medical Liability Monitor* said the governor's claim, "doesn't stack up with the reality of the situation."¹ As mentioned above, the Iowa Medical Society touts Iowa's medical liability rates and liability climate as a recruiting tool.

Furthermore, a study by the University of Iowa College of Medicine ("Physician Relocation Study" – 2010) showed that Iowa medical care providers are not leaving the state for medical liability reasons. The College of Medicine surveyed three-fourths of all the physicians who left Iowa between 2007-2008. Of the 220 physicians who completed the survey, just one of them cited "professional liability" as a major reason for leaving. (SEE ATTACHMENT)

V. Medical Negligence in the News

a. Recent news stories related to medical negligence
(SEE ATTACHMENTS)

b. Recent newspaper editorials related to medical negligence
(SEE ATTACHMENTS)

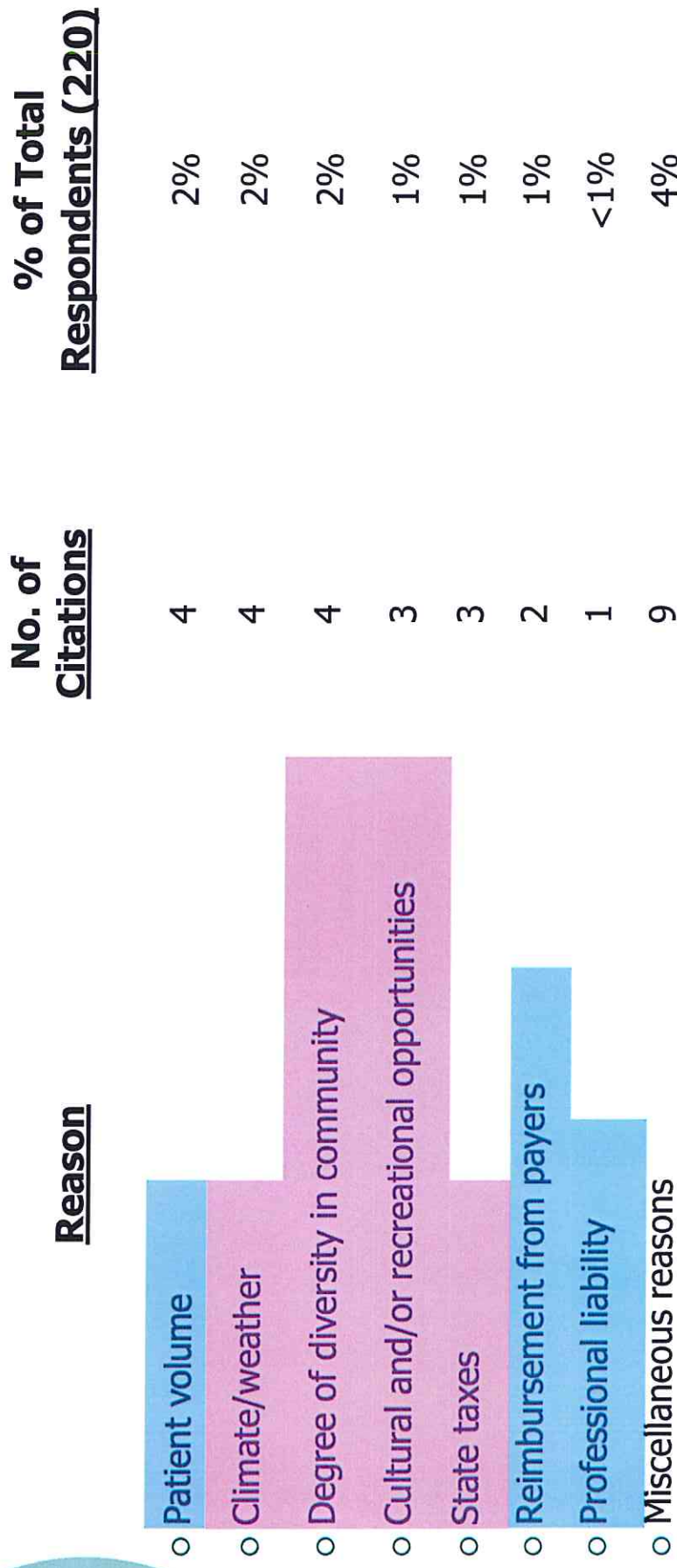
¹ Tony Leys, "Malpractice lawsuit claim rejected," *Des Moines Register*, February 7, 2013.
- Article attached to study.

UI College of Medicine survey
“Physician Relocation Study”
December 1, 2010

Attachment is page 27 of study, entire study can be found at:
[http://www.idph.state.ia.us/IDPHChannelsService/file.ashx?file=AE
ABAF64-E1AF-4DC3-AF09-24559AC3A7AA](http://www.idph.state.ia.us/IDPHChannelsService/file.ashx?file=AEABAF64-E1AF-4DC3-AF09-24559AC3A7AA)

2007-2008 SURVEY RESULTS

Most Important Reason for Relocation (cont'd.)



Conclusion: Payer reimbursement was not an issue among relocators.

Recent news stories related to medical negligence

The Des Moines Register

TODAY IN SPORTS: NATIONAL SIGNING DAY

CLASSES IN

ISU: Rhoads' fifth collection of newcomers among his best

IOWA: Ferentz maintains focus on development

THURSDAY, FEBRUARY 7, 2013 | THE NEWS IOWA DEPENDS UPON | DESMOINESREGISTER.COM | METRO EDITION

A GANNETT COMPANY

Malpractice lawsuit claim rejected

Medical liability researcher says legal, insurance costs don't explain Iowa's difficulty in recruiting doctors

By Tony Leys
tleys@dmreg.com

Iowa should not blame its doctor shortage on the cost of medical malpractice lawsuits, a national expert says.

Gov. Terry Branstad is push-

ing for limits on such lawsuits, saying they're a major reason the state has trouble recruiting enough doctors. But Mike Matray, editor of the trade journal Medical Liability Monitor, said the governor's contention "doesn't stack up with the reali-

ty of the situation."

Matray tracks premiums doctors pay for such insurance, and he noted that those costs have been unchanged in Iowa since 2008, after declining in the previous three years.

No one denies that Iowa doc-

tors spend significant sums on malpractice insurance, but their premiums are among the lowest in the country.

"If you compare it to your neighbors in Illinois, it's night

See **MEDICAL, Page 7A**

**MORE COVERAGE
ON PAGE 7A**

MALPRACTICE INSURANCE

COSTS: See the base premiums for Iowa doctors in three specialties.

LAWSUITS DROP BY HALF:

To 159 in Iowa in 2012.

MEDICAL

Continued from Page 1A

and day," said Matray, who lives near Chicago. For example, he noted that many obstetricians in his state pay much more than \$100,000 per year for malpractice insurance, double or triple what their Iowa counterparts pay.

Branstad is urging legislators to require that a medical expert screen malpractice lawsuits before the cases can move forward in court. He also wants to place caps on how much juries could award in noneconomic damages in such cases. About two dozen states have such rules, and the governor said Iowa should join them.

"Frivolous lawsuits are harming our ability to recruit and retain doctors," Branstad said in his Condition of the State speech last month. "... These are sensible reforms. We know that they work because the states that have these laws have more doctors and lower insurance costs than we do."

In an interview afterward, Branstad cited Texas as an example. Matray's tracking shows Texas as physicians' insurance premiums have dropped dramatically, but remain significantly higher than those for Iowa doctors. Policies from Texas' top carrier are roughly \$5,000 to \$13,000 more per year than those offered by Iowa's top carrier.

Branstad spokesman Tim Albrecht said in an email last week that the governor is concerned that Iowa has fewer physicians per capita than nearby states, such as North Dakota, Nebraska and Minnesota.

Matray's national survey indicates that malpractice insurance in those three states is \$1,000 to \$7,000 less per year than Iowa doctors pay.

"The difference between Iowa and a state like Minnesota, where it is 50 percent less costly to defend a medical malpractice claim, is the certificate of merit law adopted by Minnesota," Albrecht wrote.

Iowa doctor group touts situation here

However, the Iowa Medical Society, which is the state's largest physician association, cites the malpractice insurance situation as a plus when it recruits doctors.

"Iowa physicians pay among the lowest medical liability rates in the nation," the group's website says. "... The statistics tell it all — Iowa has an excellent liability climate and an environment that consistently promotes quality care."

In an interview, the medical society's board chairman acknowledged that Iowa doctors pay less for malpractice insurance than many of their colleagues elsewhere pay.

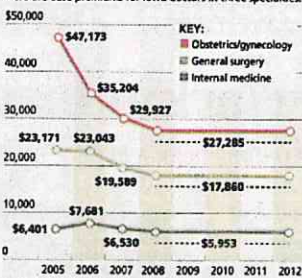
"Having it low is nice, but that is just one aspect of it, and it can always get better," said the chairman, Dr. Jeff Maire.

Maire, a general surgeon in Des Moines, said he and his colleagues dread spending time and money defending themselves against bogus malpractice lawsuits. He said he has been sued three times in about 11 years. Two of those suits were dropped, he said, and he was cleared in court in the third one.

Maire said states have a leg up in physician

Malpractice insurance costs

Premiums charged by Iowa's top medical malpractice insurer, MMIC, have held steady for five years after declining earlier. Here are base premiums for Iowa doctors in three specialties:



Lawsuits drop by half

Here is the number of medical malpractice lawsuits filed in Iowa by year.



recruiting if they have award caps and a "certificate of merit" program, where an independent expert screens medical malpractice claims to see if substandard care could have caused an injury. "When people are looking at coming to the state, those are two things they want to know," he said of the malpractice lawsuit limits.

The number of medical malpractice cases filed in Iowa has dropped by more than half, from 335 in 2002 to 159 in 2012, court administrators report.

Attorney cites drop in malpractice suits

Pressley Henningsen, president of a lawyers group called the Iowa Association for Justice, said such cases are declining nationally. Henningsen, who practices law in Cedar Rapids, said plaintiffs' lawyers are hesitant to file medical malpractice suits because they know potential jurors tend to be very skeptical.

"The public is misinformed on this issue," he said. "They honestly believe that there are too many lawsuits being brought and that doctors need to be protected." But doctors and insurers are hard-pressed to point to many specific malpractice lawsuits that the public would agree were clearly bogus, he said.

He said national studies show juries side with doctors in about 90 percent of medical malpractice cases that go to trial. Lawyers have to balance that reality against the tens of thousands of dollars it costs to hire medical experts to testify, he said. Plaintiffs' lawyers have to foot those bills in most losing cases.

Henningsen said there is no need to have an independent expert screen potential cases, because plaintiffs' lawyers already serve that function. By adding a level of review, he said, "you're putting another hurdle in front of injured people that they're going to have to face in trying to seek justice."

Henningsen also cited a 2010 study from the University of Iowa, which interviewed 220 physicians who had left the state. Only one of those doctors

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Pain and suffering



Schelley Sanders talks about her experiences after a doctor's mistake during surgery left her with years of complications and more than \$1 million in bills.

Woman's medical nightmare is argument against malpractice caps, lawyers say

By Trish Mehaffey
The Gazette

Schelley Sanders went into a Davenport hospital on her 35th birthday in 2003 to have her fallopian tubes tied, a relatively simple procedure, but a surgeon's mistake almost killed her.

That near-death experience and her resulting poor health, some Iowa attorneys said, make the case against capping the damages patients can receive in medical malpractice cases.

During her surgery, Sanders' surgeon unknowingly punctured two holes in her bladder. He ignored her complaints of horrible, abnormal pain and sent her home, where she developed sepsis, a life-threatening

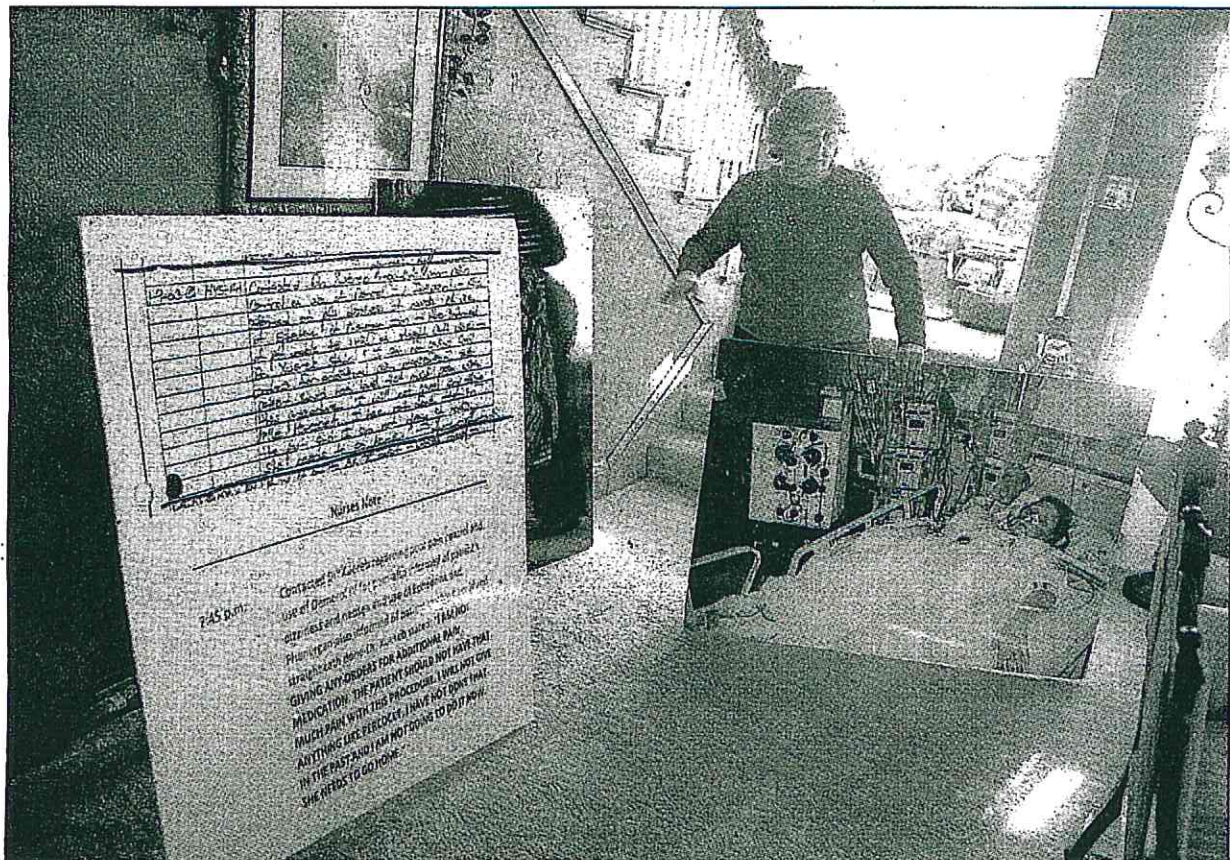
infection that affects the entire body.

She then developed a flesh-eating virus from the medications to fight the infection and lapsed into a "locked in" state for several months. She couldn't move, she couldn't speak, she had no muscle control. She could communicate only with her eyes.

She spent five and a half months in the hospital. She had to learn to walk and talk again. Her medical expenses totaled \$1.9 million.

Now 42, she will never fully recover. She can't sit or stand for long periods of time, and she can never work again. She

► MALPRACTICE, PAGE 11A



Cliff Jette photos/The Gazette

Schelley Sanders displays materials at her Moline, Ill., home that were prepared for the malpractice suit against her doctor. Among them is a photo of her during her extended stay in intensive care following a doctor's error during a routine surgery in 2003.

Malpractice/No malpractice caps in Iowa

► FROM PAGE 1A

had worked as a bank teller and receptionist to support herself and her two sons after two divorces. She is heavily medicated for chronic pain — more than 20 pills a day that make her tired and sluggish.

Sanders, who lives in Moline, Ill., sued her doctor in 2004 and settled for a confidential amount last April 1. If she hadn't received the settlement, she said, she would be homeless or living in public housing.

Cedar Rapids lawyer Tim Semelroth, a past president of the Iowa Association for Justice, said if Iowa had malpractice caps, Sanders could never pay for the medical treatment she required.

Iowa doesn't have malpractice caps, but Semelroth said the insurance industry has pushed since the 1970s for such caps during economic downturns.

Iowa hasn't enacted the caps, he said, because past governors, like Robert Ray and Tom Vilsack, had enough "real-world legal knowledge" to recognize that caps don't improve the quality of health care.

"Caps on quality-of-life damages are a sham cure," Semelroth said. "History shows caps don't lower insurance rates for doctors. Caps don't lower insurance rates for patients. Caps just make more money for insurance corporations. That is why caps get proposed every time the insurance industry loses money in the market."

Study looks at caps

Semelroth cites a study released by the Iowa Association for Justice and conducted by the American Association for Justice — a state and national organization of trial lawyers who work to strengthen the justice system — that shows malpractice insurer profits are 24 percent higher in states with caps on malpractice damages than in states without the caps.

The study, using data from the National Association of Insurance Commissioners and company annual statements,

On the Net



Find the complete Iowa Association for Justice study at www.iowajustice.org/IA/

found that, in 2008, the average profit of the 10 largest medical malpractice insurers was higher than 99 percent of Fortune 500 companies.

In states with caps, the study found, insurance companies took in 3.5 times more in premiums than they paid out in 2008. In contrast, insurers in states without caps took in just over twice what they paid in claims, the study found.

Semelroth said he found 27 states have capped quality-of-life damages in medical malpractice cases. The average cap that gets proposed is \$250,000, but that can vary by how each state implements them, Semelroth said.

Texas, for example, uses a graduated cap, where an injured patient can seek \$250,000 from a health-care provider and \$250,000 from health-care centers.

The study also found no correlation between the cost of malpractice premiums and health insurance premiums. Maine, for example, has the ninth-lowest malpractice premiums but the fourth-highest health insurance premiums. Nevada has the third-lowest health insurance premiums but the ninth-highest malpractice premiums, despite having a malpractice cap for eight years.

Iowa has the fifth-lowest medical malpractice premiums and the 13th-lowest health insurance premiums, according to the study.

Libby Lincoln, general counsel for Midwest Medical Insurance Co. in Minnesota, with a branch office in West Des Moines, said nobody can argue the insurance company profits cited in the study, but it doesn't show the entire picture, she said.

The study, she said, looks only at the amount paid out on claims. It doesn't show the reserve funds that an insurance company has to show on its books to cover claims. She said the study also doesn't



Cliff Jette/The Gazette

Schelley Sanders of Moline, Ill., looks at a nurse's note that was prepared for her malpractice suit, after a doctor's mistake during a routine surgery left her with permanent medical complications and more than \$1 million in bills.

show how much it costs the insurance carriers for defending these claims.

Midwest Medical and many other insurance carriers are partly owned by the policy holders — the doctors who are insured. Midwest is 60 percent owned by physicians.

"Any unanticipated profits are returned to the policy holders," Lincoln said. "Since 1995, over \$25 million was returned to holders."

Arguments against caps

Semelroth said patients like Sanders would be hurt by such caps, and it would be difficult for attorneys to represent them because such cases are time-consuming and expensive to litigate.

His firm's average cost to bring a medical malpractice case to trial is \$50,000 and sometimes reaches twice that amount, Semelroth said. That amount doesn't include the time of the attorneys, just the cost of hiring medical experts and collecting evidence.

Semelroth said they receive about 300 calls a year related to malpractice but file only about 10 to 15 because of the expense and merit of the cases.

"If we made a habit of filing medical malpractice cases without merit, we would quickly go bankrupt," Semelroth said.

Attorneys who win malpractice cases receive a contingency

fee, usually one-third to 40 percent of the settlement.

Larry Helvey, a Cedar Rapids lawyer and an emergency room doctor at St. Luke's Hospital, believes malpractice caps are a bad idea. It's not fair, he argues, to put a blanket cap on patients who are victims of malpractice.



Dr. Larry Helvey
St. Luke's
Hospital ER
doctor

"Some are disabled for life, and there's pain and suffering for life," Helvey said. "I don't know how you put a cap on that."

Helvey, also the former medical director of St. Luke's emergency room, said he's in the unique position of being a doctor and a lawyer. He said he would prefer reform to make medical malpractice insurance more like car insurance.

"It would be more fair," Helvey said. "You run into someone's car, and you pay whatever the damages are to repair it. Wouldn't that make more sense?"

Helvey said he believes most doctors would like to step up and pay if they make a mistake, but the "insurance companies won't let them and their lawyers won't let them."

Surviving

Sanders said she suffers

daily from the long-term effects of a doctor's mistake.

"I'm deaf in one ear and have partial hearing loss in the other," she said Monday as she sat, wrapped in a blanket, on the couch in her Moline home. "I could totally lose my hearing someday. I have pain all the time. I also have a blood clot in my left leg. My lungs have collapsed, and I have to have oxygen when I sleep. I have limited muscle control and movement in my left foot."

Sanders wrapped the blanket around her a bit tighter as she talked about being diagnosed in 2008 with ovarian cancer. She had a hysterectomy and went through chemotherapy, but the cancer came back last year. She is currently going through chemo again.

The doctors told Sanders that further surgery is too risky.

Michael Bush, the Davenport attorney who represented Sanders in her medical malpractice lawsuit against Dr. Dennis Xeureb, who is now retired, said malpractice caps are unfair to patients like Sanders.

"It's a miracle she survived," Bush said. "The \$1.9 million in medical expenses doesn't even include the ovarian cancer. An oncologist said nobody knows what causes ovarian cancer, but based on numerous studies, all the scarring and over 80 X-rays put Sanders at high risk."

Sanders said she is determined to survive.

"When they gave me 10 exercises to do, I would do 20," she said. "I didn't listen to those who said (you) can't."

Sanders said she is thankful Iowa didn't have malpractice caps when she sued, given that the final award was large enough to cover the majority of her medical expenses, allow her to have a home and send her two sons to college this year.

"Doctors can't do this and get away with it," she said. "I've forgiven my doctor a long time ago, but it helps that he's no longer practicing. They have to look at human life and figure it's worth something. This took everything from me."

■ Comments: (319) 398-8318; <http://justobserver.wordpress.com/>; trish.mehaffey@gazcomm.com

Recent newspaper editorials related to medical negligence

Opinion

The Des Moines Register

Laura L. Hollingsworth, Publisher and President
 Rick Green, Editor and Vice President
 Randy Evans, Editorial Page Editor

Rox Laird, Editorial Writer
 Andie Dominick, Editorial Writer

The Register's Editorial

Iowa doesn't have a malpractice crisis

Problems recruiting, retaining docs involve fatter salaries elsewhere

Gov. Terry Branstad says "frivolous" medical malpractice lawsuits make it more difficult for Iowa to recruit and retain physicians. He has asked state lawmakers to require a medical expert to screen cases before they can move forward in court. He also wants to cap the amount of "non-economic" damages juries could award when someone is injured by a doctor.

The governor's assertions are not rooted in facts, and the Legislature should not entertain such measures. For future reference, here are the facts:

» Iowans rarely sue doctors and hospitals for alleged wrongdoing, and we have been even less litigious in recent years. In a state with 3 million people, there were 159 medical malpractice lawsuits filed in Iowa courts in 2012. That is less than half the 335 lawsuits filed a decade ago.

» The cost of malpractice insurance for Iowa physicians isn't discouraging doctors from locating here. That is the opinion of the state's largest association of doctors. "Iowa physicians pay among the lowest medical liability rates in the nation," says the Iowa Medical Society's website.

Mike Matray, editor of the trade journal Medical Liability Monitor, said an obstetrician in Illinois could pay two or three times more for insurance than a similar doctor in Iowa.

» The business-friendly U.S. Chamber of Commerce ranks Iowa 10th best in the country in its 2012 "Lawsuit Climate" report. The study explores how "fair and reasonable" businesses perceive a state's tort liability system to be. This state ranked fifth in "overall treatment of tort and contract litigation" and seventh in awarding damages and eighth on "jury fairness."

The governor's proposals

for reform aren't just solutions in search of a problem. They also damage the reputation of this state. When he wrongly claims in a speech that Iowa has a problem with "frivolous" lawsuits, he's sending a message to doctors everywhere that they shouldn't move to this state.

Instead, Branstad should be touting the results of the U.S. Chamber of Commerce's study: Iowa is a good place for not only physicians, but for all businesses, because this state has a better "lawsuit climate" than almost all other states.

» Doctors don't leave Iowa because their professional

insurance is too expensive. Researchers who conducted a 2010 study for the University of Iowa interviewed 220 physicians who had left. Only one said professional liability was an issue in deciding to relocate.

Many more said they left because they wanted to earn more money.

And that is a point Branstad should pay attention to. He refuses to support expanding Medicaid health insurance to cover thousands of low-income Iowans who now are without any insurance. With no alternative plan to insure these people, doctors won't get paid to treat them. Of course, that won't have them beating down the doors to locate here.

IOWA CITY Press-Citizen

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Support justice for victims of medical negligence

Written by Martin A. Diaz - Mar. 07, 2013

The push is on to take rights away from patients who have been devastated by medical negligence ("Time to stop the practice of defensive medicine"). Before we go down that road, let's consider the human side of this issue.

The story of a child's life almost always begins with the joy and optimism that comes with an expectant birth -- a baby shower full of presents, balloons, cake, hugs and excitement. There is tense anticipation leading up to labor and delivery. We cannot wait for the blessed event.

New life is supposed to begin in the arms of mom and dad, but here's a story that turned out tragically different. This life begins in the hospital Neonatal ICU, where the baby lies on a warmer with tubes and beeping machines keeping him alive. This baby is distressed, discolored, he has a misshapen head and he is struggling to survive.

His mom's obstetrician chose to excessively and unnecessarily use the drug Pitocin, a synthetic pharmaceutical used to mimic the natural hormones released by a mother during labor. This error in judgment resulted in a dysfunctional 28-hour labor that ended disastrously for the child.

Pitocin is intended to help initiate labor, under limited circumstances, when it won't happen naturally. In this case it was used dangerously and improperly to rush along labor. This caused labor contractions that were too fast and too severe. The pressure from these unnaturally severe contractions harmed the baby, and damaged his brain. The mother brought a legal claim of medical malpractice and received a just settlement. This legal claim allows the parents to afford extensive lifetime care for their child, and it's likely to deter similar tragedies in the future.

Unlike most children, this son's milestones won't be about rolling over, sitting up, crawling, walking and talking. They will be about life-long physical therapy, permanent disability, and a never-ending procession of doctors, specialists, and home health care aids. Thanks to our civil justice system, this child will receive the full range of care needed to realize his severely limited potential, but it should never have come to this. Like so many medical errors, this was entirely preventable.

As an attorney, I represent families whose lives have been broken, sometimes ended, by preventable medical errors. The parents in this story are from Iowa City and they're clients of mine. Like so many Iowans I represent, they will be haunted by a medical error nightmare that never ends.

To be sure, most medical providers are very good at what they do. That is especially true here in Iowa City. But when medical providers make bad choices that harm or kill their patients, and the evidence shows their care was substandard, they should be held accountable.

The Institute of Medicine found that up to 98,000 Americans die every year from preventable medical errors in hospitals alone, including way too many Iowans. When you read about Iowa medical providers pushing lawmakers to give them less accountability by blocking lawsuits -- so-called "medical liability reform" -- think about the lives that are irreparably shattered because of preventable medical errors. We need more accountability in the medical profession, not less.

Going to court is no picnic for anyone involved, but sometimes it's the only way to get justice. Medical providers hold our lives in their hands. To improve the quality and safety of health care for all of us, we need to make medical providers more accountable, not less.

Martin A. Diaz, an Iowa City attorney, represents Iowans who have been injured by medical malpractice. Contact him at marty@martindiazlawfirm.com.

The Gazette

Patients deserve efficient process

By Pressley Henningsen
March 6, 2013

In a Feb. 27 guest column, Dr. Steven Jacobs, a member of the Iowa Medical Society board of directors, discussed medical malpractice reforms. He claimed the current system is costly and inefficient. Attorneys like me who represent victims of medical errors do think our system can be improved.

Our group, the Iowa Association for Justice, offered a legislative compromise two years ago to impose reasonable limits on the number of experts both sides use in a lawsuit. Experts often charge upward of \$1,000 per hour, and some defendants hire 5-10 experts to defend a single lawsuit. This is easily the biggest driver of litigation costs for both sides. The IMS rejected this cost-saving measure.

IAJ also agrees that cases drag on far too long, leaving both sides in legal limbo. Civil cases are routinely delayed because of insufficient funding for the courts, not because of flaws in our laws. When judges are understaffed, they put off civil cases to process criminal cases, as they are constitutionally obliged to do. Every year our group fights for adequate court funding. We helped Justice Not Politics produce a video on this topic that you can watch at www.WeSupportIowaCourts.com.



The reforms Jacobs supports would actually make our system more costly and less efficient.

Certificates of merit add a layer to the process for injured patients, adding time and costs. Screening panels create a whole new bureaucratic process that replaces citizen jurors with unelected bureaucrats. Jacobs highlighted Maine for effective screening panels. Not according to the Chief Justice of the Maine Supreme Court, who called their panels, “a cumbersome process with unpredictable results that cost both the plaintiffs and defendants money and time in a way that was not intended by the Legislature.”

It’s no wonder multiple states have abandoned certificates of merit and screening panels because they were either grossly ineffective or patently unconstitutional.

Over the last decade, medical malpractice lawsuits in Iowa have fallen by half. Liability insurance premiums for Iowa medical providers have also gone down and are among the lowest in the nation. Meanwhile, the Institute of Medicine estimates that some 98,000 Americans die each year from preventable medical errors, including way too many Iowans.

If the IMS was interested in improving the process, it would push for more judicial branch funding and common-sense limits on trial testimony. It would commit time and energy to reducing medical errors.

The system already favors medical providers. We shouldn’t make it more difficult for the patients they harm to seek accountability.

Pressley Henningsen, a Cedar Rapids attorney, is president of the Iowa Association for Justice. Comments; phenningsen@fightingforfairness.com.

<http://thegazette.com/2013/03/06/patients-deserve-efficient-process/>

Opinion

The Des Moines Register

Laura L. Hollingsworth, Publisher and President
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Register Editorial

Malpractice reform rests on thin evidence

Washington lawmakers who advocate for medical malpractice reform assume they know what goes on in doctors' offices. They say physicians order unnecessary tests because they fear being sued. So-called "defensive medicine" drives up health spending, the argument goes.

They don't acknowledge many doctors order tests because they're trying to do a thorough job with patients. They rarely mention too much testing is a result of this country's "fee for service" system of paying doctors. The more care they provide, the more they bill.

Yet proponents of tort reform continue to call for changes in the law — usually caps on the amount of money in non-economic damages patients can

U of I study suggests tort reform won't reduce unnecessary medical tests that drive up health costs.

collect in malpractice lawsuits. Even if that did drive down the price of insurance for doctors, that doesn't mean the savings would be passed on to consumers. It wouldn't automatically lead to reduced health costs.

Proponents of malpractice reform make a huge assumption: Doctors would order fewer medical tests if patients could receive only a limited amount of money in a potential lawsuit.

That assumption isn't necessarily true, according to a study from the University of Iowa. Published in the journal Health Affairs, researchers

found that reducing malpractice costs doesn't make doctors less concerned about being sued. It also doesn't necessarily result in them ordering fewer tests.

"Overall, the study suggests that current tort reform efforts aimed at reducing malpractice risk would be relatively ineffective in alleviating physicians' concern about lawsuits and therefore may not alter defensive medicine practices," according to information from the University of Iowa.

This rings true with discussions the Register's editorial page staff has had with Iowa doctors over

the years. The most memorable was a 2009 conversation with Dr. Thomas Carlistrom, a Des Moines neurosurgeon.

An advocate of both tort reform and a single-payer health care system, he said in one day he ordered about \$10,000 worth of what he calls "CYA" tests — an acronym for "Cover You're A—" medicine. These included lab work, MRIs and CAT scans he said were not medically necessary, but needed to prove he did his job in case he was ever sued.

Yet, he also told us he didn't think he'd change how he works if someone could collect

a limited amount of money in a lawsuit.

"I doubt it. You're talking to a 63-year-old," he said at the time. "I don't think I'd ever change." And when we checked with him again recently, he hadn't changed his mind, but offered a reminder that "malpractice and civil litigation remain a big problem."

Yet critics of the new health reform law continue to point to malpractice reform as a way to lower health care costs in this country. It is part of the Republican "repeal and replace" mantra directed at striking down the new health reform law. But there's little evidence it would have any impact on reducing costs — or, just as important, getting millions of Americans health insurance.