

Editorial

Lawsuit Abuse

Dr. Jaffar M Al Bareeq, DLO, RCP, RCS*

These are excerpts from the economy conference held in the white house on 15 December 2004. President Bush, Secretary Evans and others discussed the lawsuit abuse. I will let the reader be the judge, whether we need a lawsuit reform in Bahrain or not – since 1993 many consultants practicing in Bahrain were plagued with many frivolous suits and the number is increasing.

The President

"One issue that I talked about to make sure that costs were reasonable and that the cost of capital was reasonable was legal reform, that the cost of frivolous lawsuits, in some cases, make it prohibitively expensive for a small business to stay in business or for a doctor to practice medicine -- in which case, it means the health care costs of a job provider or job creator has escalated, or is escalating.

"If we can achieve legal reform in America it'll make it a better place for people either to start a business and/or find work."

"We expect the House and the Senate to pass meaningful liability reform on asbestos, on class action and medical liability."

Secretary Evans

"As you know, the issue of lawsuit abuse has many, many facets to it. And so I'm delighted that we have been able to assemble a number of people that look at it from an economist perspective, an academia perspective, a small business perspective, a health care perspective, because there's many, many issues that relate to lawsuit abuse in this country."

"Lawsuit abuse is not only threatens our competitiveness and innovation in the world, but it also harms our health care system, it raises the cost of health care in this country, it stifles innovation, et cetera."

"Doctors are moving around and trying to find a more friendly environment."

*Chief Editor

Bahrain Medical Bulletin
Kingdom of Bahrain

Mr. Priest

"Litigation has no effect on safety; it has no effect on the redesign of automobiles."

"The medical industry is a good example. Defensive medicine is, in essence, counterproductive and it's an investment that's made to try and ward off litigation for no useful purpose."

"Now, what can be done about it? Well, I think the most fundamental reforms have to come from the courts. It is the courts that created this problem and it has to come from the courts in redefining liability rules."

"I think federal reform in particular industries -- such as in the medical industry -- a reform of medical malpractice is important, too, and it's a promising reform because all of the doctors and all of us know that we have to control health costs, and all of us know, too, and can see easily what the harmful effects of expanding liability against needed medical services is. So medical malpractice reform is important, as well."

The President

"First of all, justice ought to be fair. And those who have hurt ought to have their day in court. But a judicial system run amok is one that makes it really hard for small businesses to stay in business."

Mr. Nardelli

"It is the excessive awards in medical liability suits. Quite honestly, it won't be long before we see a line item on every doctor's bill that is handed out in this country for litigation."

Mrs. Bankston (owner of pharmacy)

"Overnight, our life's work had gone from serving the public's health to becoming a means to an end for trial lawyers to cash in on money-making class action lawsuits."

Mr. Howard

"We have heard, and you are going to hear again, how horrible it is when our best trained professionals, positions, get driven out of business. One out of seven obstetricians in this country is no longer practicing obstetrics."

"This group, Common Good, that I founded a couple of years ago hired Harris Poll to survey all the doctors. Four out of five said that they admitted to ordering tests that they didn't think were needed. It is now part of the practice to waste money."

Secretary Evans

"Barb and Andy will explain how medical liability crisis has caused, one, Barb to quit delivering babies, and the other, Andy, to lose her doctor. Barb."

Dr. Coen

"I am an obstetrician/gynecologist who can no longer call herself an obstetrician. Three years ago, my partner, Dr. Susan Clark, and I started a small practice called Generations Women's Health Care, in Norton, Ohio. We had the help of Barberton Citizen's Hospital for two years. At the end of two years, we were to be independent from the hospital and be operating on our own. At that time, we decided to look for medical liability insurance and were stunned to find that our premiums were going from \$60,000 for our current space malpractice, to \$118,000 for claims-made liability. At that time, we had 110 pregnant women in the practice and had three weeks to tell them they had to find a new physician. Anyone who has ever had a baby understands the relationship between the obstetrician and that patient is so special. They are trusting you with their most precious possession, the life of that child. And it was awful to call those patients and tell them we couldn't take care of them. I got notes saying, "I promise I won't sue you, please deliver my baby." It was absolutely heartbreaking. Some people were due the next week. It's an awful system that needs to be reformed."

The President

"These lawsuits are driving really fine, competent people out of the practice of medicine, like Barb, which makes medicine less accessible."

"And then you heard not only the cost to our budget, but the cost to an individual doctor to practice medicine is passed on to patients, which makes medicine less affordable. We need medical liability reform. This is a vital issue for the quality of life of thousands of people in our country."

"And so, I told you then and I'm going to tell you again, this is a priority issue for not only me, but for a lot of people in the Senate. We cannot have the legal system to be a legal lottery. We want the legal system to be fair and balanced so people can get good health care, so small businesses can afford to stay in business."

Mr. Priest

"Well, what does take ... where local judges who have close ties with plaintiff attorneys - I don't want to use the word "conspire," but they have a mutually symbiotic relationship in letting these class actions go forward."

Mr. Howard

"Judges in America today don't have the idea that part of their job is to actually draw the boundaries of what's a reasonable or excessive claim, or what's a frivolous claim or not. People bring a claim and they act like referees."

The second excerpt is from an article by William R. Brody Titled "Dispelling Malpractice Myths"

The writer is president of Johns Hopkins University. The article was published in Washington Post, Sunday, November 14, 2004.

Myth No. 1: The medical malpractice crisis is someone else's problem, not mine

Premiums paid for malpractice insurance directly affect everyone's access to needed care and the cost of this care. Some excellent doctors are leaving practice in the face of unaffordable insurance premiums. Others are cutting back on the services they offer.

Myth No. 2: We need to preserve the current legal system to guarantee a fair hearing and provide compensation for patients harmed by the health care system.

The medical justice system today is mostly random; it has become essentially a lottery. Hardly anyone seems to know this, although the facts are on the public record.

And a recent study by Harvard University researchers found that 80 percent of malpractice claims were filed against doctors who had made no error whatever.

Myth No. 3: The malpractice system is necessary to punish and remove incompetent health care providers.

Nor does the current liability system provide a way to make health care safer. Physicians, nurses and other professionals want to provide quality care, but they are human and make mistakes. What we need is a system that allows health care providers to work together to study errors and put practical improvements in place to prevent recurrences. The current system discourages doctors from talking about system failures for fear of being sued.

Myth No. 4: Malpractice costs are not a big deal -- they amount to less than 2 percent of total health care costs.

The irrationality of our current medical justice system leads to the practice of "defensive medicine," in which doctors try to stave off lawsuits by ordering more tests than are medically necessary. Got a headache? You are as likely to get a CAT scan as a couple of aspirin. The added costs of defensive medicine are estimated at \$50 billion to \$100 billion per year.

Myth No. 5: The current malpractice insurance system is in crisis because insurance companies are trying to cover losses from unwise financial investments made during the dot-com boom.

Our system of medical justice is fair to no one but malpractice lawyers. Nationally, attorneys and the legal system gobble up about 60 percent of the costs involved with malpractice cases and awards. They are the true winners in this system -- and patients, hospitals and the general public are paying higher prices to subsidize the purchase of tickets for our medical lottery.

A few new caps on liability costs are not going to solve the problem. It is time we begin a comprehensive reform of the medical justice system.

If United States needs legal reform, what would we say in Bahrain?