

COMMENTARY

Tort reformers crying wolf again

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By Brian R. Wilson

CANTON: On July 1, the Ohio State Medical Association told the Ohio General Assembly: "Within the next several days, the number of physicians unable to continue medical practice in Ohio because of lack of adequate malpractice coverage will reach crisis proportions." But this was not July 1, 2004. Neither was it July 1, 2003, or even 2002 or 2001 when Ohio physicians saw their malpractice premiums rising.

When did the OSMA first complain that a malpractice crisis was going to cripple medical care? July 1, 1975. Not coincidentally, the nation was in the midst of a recession and a depressed stock market.

In response, the Ohio General Assembly enacted the Ohio Medical Malpractice Act, which capped noneconomic ("human suffering") compensation at \$200,000.

During the 1980s, the insurance industry again complained of a liability crisis. Again, we were experiencing a recession and a flat stock market.

In a national ad campaign, insurers claimed that doctors were leaving their practices. They even proclaimed that high school sports were about to be canceled due to a "lawsuit crisis."

Insurance companies claimed that tort reform was the answer to

escalating premiums. But, despite this crisis, Ohio businesses prospered. Ohio physicians did not stop delivering babies. High school football survived.

In the mid-1990s, the economy was revving in full gear and the stock market was booming. But this did not stall the tort-reform movement. Despite the good economic times, in 1996, the legislature passed sweeping tort reform via House Bill 350, including limits on noneconomic compensation in all civil lawsuits.

The claimed goal of that 1996 reform was to stabilize the costs of health care delivery, manufacturing, and the delivery of services. But the law was thrown out by the Ohio Supreme Court in 1999 as unconstitutional.

We now move to 2001-2002. After years of low premiums, physicians' malpractice premiums began to skyrocket. Not coincidentally, the stock market has tumbled.

To recoup their losses in the stock and bond markets, insurance companies raised physicians' rates overnight. In response, the legislature enacted H.B. 281, which capped at \$350,000 noneconomic compensation in almost all medical malpractice cases.

Despite promises by doctors and insurers that caps on compensation would reduce malpractice premiums, the premiums are still rising in Ohio, and the doctors are still complaining. Now, Ohio busi-

ness groups are crying, "Me, too."

Senate Bill 80 is pending before the state legislature. Promoted as a jobs-creation bill, this big-business wish list limits compensation for human suffering at \$250,000 in all injury cases.

Based on a 30-year track record, one thing is obvious: Roughly every 10 years, business and insurance interests claim there's another lawsuit crisis and crank up the tort-reform machine.

And time and time again, the people are threatened that their doctors will leave and medical care and the economy will crash unless tort reform is passed. Always, caps are the magic pill to saving health care and restoring our economy.

Ohio's experience proves the fallacy of this shopworn argument. We had a medical "crisis" in 1975, and a \$200,000 cap that was thrown out unanimously in 1991 by the Ohio Supreme Court. Physicians didn't leave Ohio. Instead, they enjoyed stable malpractice rates until recently. And Ohio enjoyed the benefits of a rising stock market and solid growth of jobs in the mid-90s without any tort reform.

The facts have added up for three decades now. The tort-reform movement is a political wish list by a muscled business lobby, and not an elixir that is the panacea for Ohio's economic woes. History has taught us: Come rain or shine, economic boom or bust, crisis or calm, the drum beat of

tort reform continues. And there is no true cause and effect between capping a catastrophically injured person's compensation and insurance rates or abstract notions of "competitiveness" or an "improved economy."

We have heard Chicken Little cry for 30 years that the economic sky is falling due to lawsuits. It is time to recognize that tort reform is just a broken record that skips over the same song over and over.

But in one sense, maybe caps are the answer. Capping insurance company premiums would bring down insurance rates. And capping CEO salaries would perhaps create more Ohio jobs. But these caps will never see the light of day. And, given our free-market society, perhaps that's a good thing.

So why is it OK to limit innocent Ohioans' recovery, if their lives have been ruined by impaired drivers or dangerous prescription drugs, for the sake of an "improved economy"?

If S.B. 80 passes, I will be telling people: "Sorry you can't walk, but Ohio politicians limited you to \$250,000 to promote jobs for the good of the economy." S.B. 80's ultimate message is this: Free markets are great and less government is better, but if you lose a limb, we need laws to cap your compensation.

That would be a law that Karl Marx, the 19th-century German philosopher and father of modern socialism, could be quite proud of.