Docs Need Malpractice Relief: The Threat of Lawsuits is Crushing New York Hospitals

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By Dr. Lee Goldman & Dr. Herbert Pardes
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Last summer, Long Island College Hospital in Brooklyn announced it could no longer afford to deliver babies. Other hospitals around the city and state are being forced to make similar choices, leaving maternity care, one of the most basic services provided by doctors and hospitals, ever more difficult to find.

The high cost of malpractice insurance - which is driven up by runaway malpractice litigation, especially in New York State - is the single biggest reason why.

This is the ideal moment to confront the problem. Hospitals are justifiably concerned about the impacts of coming state health care cuts. Targeted malpractice insurance and tort reform would soften that blow by reducing costs to hospitals and doctors.

New York's doctors already face among the highest malpractice premiums in the nation, and they're felt most painfully by ob-gyns. Premiums for obstetricians on average are $137,000 a year in Manhattan - and even higher in Nassau and Suffolk counties. Contrast this to Los Angeles, where the rates average just $63,000, in part because California has already tackled the malpractice crisis.

Ob-gyns currently stop practicing obstetrics at an average age of 48, at the peak of their skill and experience, citing malpractice insurance costs as a major reason. Often they continue their gynecology practice but no longer deliver babies.

Some people claim malpractice lawsuits improve medical quality by holding physicians to high standards. But a 2004 health policy report in The New England Journal of Medicine found that lawsuits are at best inefficient and at worst useless in regulating the quality of care. In fact, the threat of malpractice suits may lead doctors to practice "defensive medicine," ordering expensive and sometimes unnecessary tests and reviews by specialists. That adds billions of dollars each year to patients' medical bills.

Trial lawyers have a powerful voice in New York; that's part of the reason we haven't had reform yet. And it's true - patients shouldn't ever sign away their rights.

But there are approaches that could provide just compensation for harm while avoiding litigation. The American College of Obstetricians and Gynecologists proposes a program outside the current tort system, with eligibility determined purely by "impairment," not fault. Common Good, an independent health advocacy organization, proposes health courts with specially trained judges, independent expert witnesses and predictable damage awards to handle medical injury trials.

Whichever model we move to, we need to start a serious debate right now. The status quo is terrible for doctors - and increasingly dangerous to patients.
Yes, hospitals must do their part as well. One promising obstetrical patient safety program, underway in our hospital and medical school, identifies problem pregnancies so specialists can be in place to deliver healthy babies. More healthy babies are delivered, and the number of lawsuits has been reduced.

And studies have shown that lawsuits are reduced when doctors and hospitals discuss unanticipated outcomes with patients, apologize when appropriate, accept responsibility and offer compensation.

Unfortunately in New York, apologies and early offers of compensation often are seized upon as admissions of guilt - or used as a tool to drive up the cost of settlement. Other states have protected disclosure and promoted early case resolutions. It is time for New York to do the same.

This much is certain: If allowed to continue, the current high costs of malpractice litigation and insurance coverage will drive more doctors away from medicine and could lead hospitals to close services. In light of the Medicaid cuts of concern to so many advocates, malpractice costs compound the threat to the state of health care in New York.