Is the GOP Moving to Solve a Medical Malpractice ‘Crisis” That Doesn’t Exist?

By Burt M. Kahn  February 1st, 2017

There have been countless articles this year about the efforts of President Donald Trump and the Republican-controlled Congress to end Obamacare and replace it with some other health insurance program. But the Washington Post reported at the end of 2016 that the GOP has another, much less publicized, health “reform” in mind that would harm victims of medical negligence by significantly cutting back medical malpractice awards nationwide.

This plan to limit malpractice damage awards doesn’t help patients or result in safer outcomes - just the contrary. If passed, it would take legal tools out of the hands of victims of medical negligence, with no benefit to the public (other than Heath Care Providers). Those who care protecting the public from medical mistakes need to follow this issue very closely, since to this point it has escaped almost all public notice. The public needs to stand ready to expose these proposals for what they are.

According to the Post’s December 30, 2016, article, GOP leaders, including Health and Human Services Secretary-designate Tom Price, want to “make it easier for doctors to defend themselves in malpractice cases and raise the burden of proof on patients claiming to have been injured. Most Republicans also back sharp limits on damage awards, often citing California’s landmark law capping noneconomic damages at $250,000 as a national model.”

The article points out that Price, an orthopedic surgeon who has practiced in the Atlanta area for more than 20 years, is a longtime supporter of “lawsuit abuse reform” as a way of reducing the nation’s health spending.

In fact, on January 4, 2017, the House Republican Study Committee, a caucus of conservative GOP House members, introduced an Obamacare replacement proposal that would, among many other things, make it harder for patients to sue their doctors for medical negligence.

However, as the Post article points out, the nation is not in the midst of a medical malpractice crisis. Far from it, the system is working quite well. Doctors are paying less for malpractice insurance now than they did in 2001, even after adjusting for inflation. Even without any of these draconian reforms the rate of claims has dropped by half since 2003. As the saying goes, if it ain’t broke, don’t fix it.
The “crisis” in need of a solution seems to be that doctors believe they reaping as much profit as they could with even lower premiums. It’s a power grab, pure and simple from the congress and president the medical lobby has been praying for years.

The Post article quotes Michelle Mello, a Stanford University law professor, as saying, “What strikes me about these current proposals is that they really represent the agenda of medical professionals, which is all about limiting liability. To take any malpractice reform seriously, it has to offer something to improve the situation of patients and lead to safer outcomes.”

The GOP plan does precisely the opposite by insulating careless health care providers from their mistakes.

Burt M. Kahn

Burt M. Kahn was a member of the firm’s Executive Committee and served Joseph Greenwald & Laake for 49 years in every capacity from law clerk to managing partner. He was a trial lawyer with deep experience in helping victims and their families obtain justice in complex medical malpractice matters and other avoidable accidents that result in life-changing injuries or wrongful death. Over the past four decades, Burt distinguished himself as the leading litigator in the D.C.

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