

PATIENTS' COMPENSATION SYSTEM


Proposal for an Alternative to the Failed Tort System

Op Ed: Rick Jackson, Chairman of the nonprofit organization Patients for Fair Compensation

Feelings surrounding Florida's medical tort system and negligence standards have moved beyond mere disenchantment. Indeed, when the facts are considered—that Florida spends approximately \$25 billion per year on defensive medicine, in example—it is not hyperbolic to assert the state is on the brink of crisis. Defensive medicine is the practice of ordering medical tests, procedures, and consultations of doubtful clinical value to protect against litigation. Defensive medicine is a hidden driver in the cost of healthcare, and accounts for as much as 26 percent of overall healthcare spending, or between \$1,000 and \$1,400 per Floridian per year in extraneous fees. Permit one further contextualizing illustration: It can cost \$100,000 or more in some parts of Florida to buy a year's worth of medical malpractice insurance providing \$250,000 of coverage, which is currently the required minimum for doctors with hospital privileges. So if a South Florida neurosurgeon with five years' experience pays \$113,533 in premiums and performs 50 operations in a year, the cost each patient pays just to cover the cost of the malpractice insurance is \$2,270. This is unsustainable.

Instead of spending time ordering tests that may have questionable clinical value in order to protect against the wearying threat of litigation, wouldn't a physician's time be better spent improving the standard of care? Higher standards of care, along with fair patient compensation practices, should be twin goals, but better care is not at the heart of tort reform. When improvements in the standard of care do occur, it's often little more than a happy coincidence.

It is easy to point fingers and assess blame, but I'm interested in proposing viable alternatives. One alternative is an administrative health system. Let's call our system the Patient Compensation System (PCS) and let's imagine for a moment how it might be optimally managed. Special adjudicators who would rely on neutral medical experts to render compensability determinations might run the Patient Compensation System, much like our Workers Compensation system currently in place. Compensation wouldn't be tied to negligence but to a broader avoidable medical injury standard—the standard of avoidability.



A more fair, efficient, accurate and predictable compensation system in Florida would provide an immediate savings of several billion dollars; disputes would be resolved far faster (the average determination in Denmark and Sweden is 8 months, compared to 4-5 years in the United States); all cases would be heard, instead of the 8 percent of cases filed that actually make it to court; and more importantly, we would prioritize the standardization of care.

The major problem in Florida is access to justice and compensation. Less than 20 percent of injured patients get compensation. The Patient Compensation System is about predictability. Predictability for everyone involved—patients, insurance companies, trial lawyers and businesses and predictability in timeframes, process, and outcome.

Certainly, as Florida policymakers consider how to make healthcare more accessible and affordable, they will have to ask hard questions about the legality and costs associated with a health-court program. This is a human issue. It is inhumane that our current system does not allow doctors to say they are sorry, admit they made a mistake and learn from it. It is a broken system that fractures the patient-doctor relationship.

We should move forward in our investigation of a Patient Compensation System with confidence that small-scale pilots of health courts have been met with positive results. What's clear is that not asking the questions and not considering alternatives to our broken compensation system is not an option.

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