

West Virginia Consumers and Victims Coalition for Insurance Reform

News Release

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State Must Address Rate of Medical Malpractice

Charleston, W.Va. – The Consumers and Victims Coalition for Insurance Reform called today for West Virginia lawmakers to pass legislation that will protect West Virginia patients from medical malpractice errors. In 2003, the Legislature passed a bill that limited the amount that these victims could collect in non-economic damages to just \$250,000 in an effort to reduce medical malpractice premiums—although data from other states showed that it did not work. The lawmakers did not consider any measures to protect patients and reduce the medical malpractice rate.

“The fact remains that the best way to reduce the number of medical malpractice cases in our courts is to reduce the rate of medical malpractice in our healthcare facilities. That begins by policing bad doctors—and doctors policing each other. According to data released by the Robert Wood Johnson Foundation in 2001, 95 percent of doctors have witnessed a major mistake. That’s outrageous. Why do good doctors want to practice with doctors who are regularly harming their patients?” said Gary Zuckett, coordinator of the West Virginia Consumers and Victims Coalition for Insurance Reform

Two egregious cases of medical malpractice have been featured in national media in the last week.

Hurshell Ralls, a senior citizen from Texas, had his penis and testicles erroneously removed by a physician during surgery for bladder cancer because the doctor believed the cancer had spread—although there were no tests to verify the diagnosis. Tissue samples, which were sent to the lab after surgery, showed that Ralls did not have penile cancer. Ralls had not even been told by his doctor that there was a possibility that his penis would have to be removed. Under West Virginia’s cap, Ralls would be limited to just \$250,000 in non-economic damages for the loss of his penis.

Cancer patients, like Ralls, are particularly susceptible to misdiagnoses. Johns Hopkins reviewed thousands of tissue samples from cancer patients around the country and found that one of every 71 cases was misdiagnosed.

Steven Olsen was a healthy two-year-old when he fell on a stick in the woods while hiking with his parents near their home in California. The stick penetrated his sinus area. Surgery was performed that day, and he was released. After showing signs of fever and lethargy, his parents took him back to the hospital. Doctors did not give him an \$800 CAT scan because they believed it to be unnecessary. Because no scan was done, doctors failed to notice a brain abscess caused by the accident. Steven is now blind and brain-damaged. In 2001, Steven had 74 doctor visits, 164 physical and speech therapy appointments and three trips to the emergency room. Steven's mother

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had to leave her job to care for him because he now requires 24-hour care. The jury awarded Steven \$7.1 million in non-economic compensation for his life of darkness, pain, physical retardation and around-the-clock supervision. However, the judge was forced to reduce the amount to \$250,000 because of a law capping non-economic damages in California—the plan on which the West Virginia cap is based.

“West Virginians are harmed everyday by medical errors, yet Governor Wise and the West Virginia Legislature have done nothing to reduce the outrageous rate of medical malpractice. The medical community was quick to blame victims for filling our courtrooms with lawsuits—and our legislators gave them everything they wanted at the expense of West Virginia consumers,” said Zuckett.

“Who would ever believe that these cases are frivolous? These victims and their families have already been harmed by callous negligence of healthcare professionals—and now many are being harmed again by these so-called tort reforms that have stripped our civil justice systems. It’s time for lawmakers to look at the real cause of the problem and stop punishing victims.”

The Consumers and Victims Coalition for Insurance Reform is a voluntary association of organizations and individuals committed to ensuring that the needs of West Virginia consumers are addressed by the state and the insurance industry.

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The Truth about Malpractice in America

- According to the U. S. Institute of Medicine study, it is estimated that **98,000 American patients are killed annually by hospital errors and more than 1 million are injured**. Although the study included **extensive recommendations for improving patient care and lowering malpractice incidences, almost no changes were made by hospitals and physicians**—except in Veterans’ Administration hospitals, where substantial improvements were made.
- Two million patients acquire infections in hospitals and 90,000 of them die—50 percent of incidences could be eliminated if health care providers would just wash their hands more frequently.
- It has been estimated that 1 million serious drug errors occur in hospitals alone.
- Many mistakes are being committed by inexperienced, unsupervised and exhausted interns—many of whom work 120 hours per week. Some states have enacted guidelines, limiting their work weeks to just 80 hours, but hospitals frequently violate the laws because the fines are so low.