

Malpractice

Doctors want Measure 35 to scalpel lawyers, but patients bleed.

A “Voter’s Guide for the State of Oregon” appeared in millions of mailboxes this week.

The “guide” looks official. It’s stark printing, font and formatting closely resembles the state’s official Voters’ Pamphlet.

But it’s not. It’s from the coalition of doctors, hospitals and insurance companies spending millions of dollars to push Measure 35 — a constitutional amendment to allow negligent or reckless doctors and hospitals to inflict pain and suffering and not have to pay more than \$500,000 in non-economic damages.

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Unlike the official state Voters’ Pamphlet, the look-alike contained only arguments in support of Measure 35 and the claim that personal injury attorneys were “the only opposition” to the initiative.

But Measure 35 isn’t just about doctors and lawyers clawing at each other for cash. It’s health care consumers that are under the knife and have the most at stake. The biggest health care consumer groups are opposed to Measure 35.

The American Association of Retired Persons, with half a million Oregon members, and the Grey Panthers are among the many senior citizen groups opposed to Measure 35. The AFL-CIO and other unions for firefighters, teachers and government workers say the measure will also hurt their hundreds of thousands of members. Oregon’s major newspapers, including *The Oregonian* and *The Register-Guard*, have also editorialized against the measure as bad for health care consumers. The state and nation’s largest public interest health advocacy groups oppose Measure 35, including Common Cause, the Oregon State Public Interest Research Group (OSPIRG) and Public Citizen.

Public Citizen, a 150,000 member consumer advocacy non-profit, has researched the issue of capping doctor liability extensively. There are too few malpractice lawsuits, not too many, according to the consumer group’s reports. Preventable medical errors kill between 44,000 and 98,000 Americans a year, costing society from \$17 billion to \$29 billion annually, according to a Institute of Medicine Study. In Oregon, that amounts to an estimated cost to society of \$207 million to \$353 million for the 535 to 1,191 people killed each year by preventable medical errors.

Although hundreds die and countless others are maimed or in pain, doctors face few serious repercussions. In Oregon, only 44 doctors had their medical licenses revoked, suspended or restricted in 2002. Studies by Harvard University, Utah, Colorado and Florida researchers have found that only one in six to one in eight medical errors results in a malpractice claim.

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tive and lax. Five percent of the doctors in the U.S. are responsible for 54 percent of malpractice payouts, Public Citizen found. But state medical boards have disciplined only 8 percent of these few, worst doctors. One doctor paid more than \$10 million for injuring 13 different people in Nevada and California in 10 years but was never disciplined.

The dangerous doctor’s name is kept secret in a National Practitioner Data Bank. In Oregon, the state will provide information on how many people have complained about a car dealer you’re thinking of buying

a used ride from, but not about a doctor you’re thinking about paying to cut you open and handle your vital organs.

By law, the 11-member Oregon Board of Medical Examiners is in charge of handling complaints against doctors but includes only two members representing health consumers.

The medical profession is so poorly regulated that doctors with patients’ lives in their hands are allowed to work up to 36 hours without sleeping. Mistakes happen. During 2001 in Florida hospitals, doctors committed 54 surgeries on wrong parts of the body, 16 wrong procedures and nine operations performed on wrong patients.

Doctors and hospitals argue that Oregon needs Measure 35 because high malpractice insurance premiums are driving away doctors, especially in rural areas.

But a study by Public Citizen and OSPIRG of state data found this year that there are actually more doctors moving to Oregon. The number of active doctors in Oregon rose 12 percent in the last four years, the consumer groups reported. Increases were even higher in higher risk specialties like obstetrics and in rural areas, according to the report.

To help rural areas attract doctors, the Oregon Legislature last year set up a \$40 million program that will cut rural doctors’ malpractice premiums by up to 80 percent.

In any case, doctors don’t decide where to live based on state liability laws. “Like anyone else, doctors want to live in places where they can earn high incomes, enjoy cultural and leisure activities, and send their children to good schools,” OSPIRG and Public Citizen reported.

The two consumer groups also pointed out that limiting non-economic damages will hurt the poor and women, children, minorities and seniors the most. These people can’t show big paychecks to demonstrate the lost income required by substantial economic awards.

On the other hand, doctors do have fat paychecks—averaging \$175,000 a year. But Public Citizen reported medical malpractice insurance costs amount to only 3.2 percent of the average physician’s revenues. That’s not enough to cause much pain and suffering. **EW**

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