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On the issue of tort reform

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To the editor:

In this past election cycle I attended a "meet the candidates" night at the Windham Civic Center. I witnessed the crowd erupt into spontaneous applause in response to two words — tort reform. One of the speakers seeking federal office argued that part of the solution to keeping our health care costs down was through tort reform. He did not cite any studies or statistics to support this bold claim. Nor did he explain what that reform would look like. Now that he is in office I think it is important for us to have a meaningful discourse on the issue of tort reform.

It seems that there is a pervasive view that medical malpractice claims are out of control and are driving up health care costs. Independent minded economists and legal experts disagree. A 2004 report by the Congressional Office estimates that medical malpractice claims make up only 2 percent of the costs of healthcare. Other estimates have put it at 1 to 1.5 percent.

There have been three major epidemiological studies in the United States — 1970s, 80s and 90s. The studies show that for every 100 hospitalizations there is about one serious injury due to malpractice. The startlingly statistic is that only 4-7 percent of the one percent of malpractice victims actually brings a lawsuit. In other words a minimum of 93 percent of malpractice victims don't bring a lawsuit.

Proponents of tort reform suggest that reducing the number of malpractice claims would result in savings because doctor would practice less defensive medicine. The only study that I am aware of on this point comes from Florida and was published in the Quarterly Journal of Economics by Stanley Kessler and Dr. Mark McClellan who was the head of the Center for Medicare and Medicaid services under President George W. Bush. The study found that defensive medicine accounts for approximately 2.5-3.5 percent of health care costs. There is certainly room for some defensive medicine since there are benefits to doctors being more careful and cautious in practicing medicine.

Approximately 30 states have enacted tort reform legislation with most of them capping the non-economic damages. California and Texas have capped non-economic damages at \$250,000. New York State does not have caps but appellate courts routinely reduce high personal injury awards.

As the above statistics suggest limiting one's ability to seek compensation for injuries they have suffered is not the way to reduce our health care costs. The answers lie elsewhere.

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Windham

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