

**B464. "There Are Too Few Lawsuits, Not Too Many." Los Angeles Times, (October 5, 2004) p. A15.**

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Expect to hear all about it during the debates tonight, when Vice President Dick Cheney meets former civil litigator John Edwards: Junk lawsuits are ruining America.

For the Republicans, curbing medical malpractice and other "frivolous" suits are a key theme of the campaign. Four states will vote Nov. 2 on whether to enact legislation limiting such lawsuits.

But the truth is, there aren't too many civil lawsuits; there are too few. Take medical malpractice. The American Medical Assn. warns us that million-dollar jury awards and a flood of frivolous lawsuits are increasing the cost of doctors' insurance and creating a "full-blown liability crisis." But for every patient who sues, there are several who should but don't.

A 1990 Harvard University study found that only one out of eight patients who had a valid medical malpractice claim actually filed a suit. The study examined the records of more than 30,000 patients in New York -- one of the nation's most litigious states -- and discovered that in 1984 nearly 13,000 cases supported by "strong or certain evidence of negligence" were never pursued in court.

The Harvard study found that 3.7% of all patients suffered from complications caused by doctors. Later studies have found that number to be as high as 17.7%. Among the complications cited: the surgical removal of the wrong leg or kidney, brain damage to newborns and transplant procedures that didn't properly match donor and recipient.

In 2000, the National Academy of Sciences' Institute of Medicine found that between 44,000 and 98,000 patients died every year because of mistakes made by doctors and other healthcare personnel.

Why so few suits, given such facts? Many patients don't know that it was negligence that caused their new problem. Others refuse to sue because they consider it human to err, or are grateful to a physician of many years for past care, or are fearful that they will be refused treatment if they do so.

Sadly, such a fear is far from groundless. A group of physicians in Texas launched a Web page that lists the names of patients, their lawyers and expert witnesses who testified in their support, implicitly threatening a treatment boycott against them and anyone else who hauls doctors into court.

But even if there aren't too many malpractice suits, aren't the high jury awards associated with those that are filed wreaking havoc? As it turns out, more than two-thirds of malpractice lawsuits are either dismissed or dropped before they can be settled or brought to trial, so no massive awards result. And when plaintiffs do prevail in malpractice, really large jury awards are rare and are often scaled back on appeal.

Granted, some people sue for no good reason. However, one can deal with such cases without punishing those who deserve compensation. Louisiana, for instance, has malpractice review panels made up of three doctors and an attorney who are responsible for ruling on the merit of claims. Patients who wish to file a suit first have to submit their cases to these panels. If a panel rules that the case is without merit, a plaintiff still may bring his or her suit, but the panel's report can be filed with the court. Thus such a ruling serves as a major deterrent to inappropriate suits.

Ultimately, the issue comes down to a question of balance.

Frivolous lawsuits of all stripes must be discouraged, but negligence should be punished. And we should be looking for ways to do everything more safely. For instance, the medical error rate could be reduced by reducing the number of hours interns work or improving access to computer programs that can help doctors detect dangerous drug interactions.

In the end, though, there are just two ways to encourage doctors, hospital administrators, HMOs and insurance companies to promote and pay for such reforms and programs. We could enact appropriate laws and allocate the funds to enforce them -- although this would be difficult considering the power of the medical lobbies and federal and state budget shortfalls. Or we could encourage malpractice lawsuits whenever there is just cause -- which would result in safer medical practices across the board.