

A Surprising Year

Twelve savvy legal observers reflect on the unexpected developments of 2004.

Wayne R. Cohen

President, Trial Lawyers Association
of Metropolitan Washington, D.C.

The most surprising development in 2004 has been the public's misconception about the need for medical malpractice reform. There is a medical malpractice crisis, but it has been caused by malpractice insurers, not jury awards.

The business of insuring doctors is, for the most part, immensely profitable. However, these insurers lost big money in the stock market, and now they are passing those losses on to doctors through their malpractice premiums. That is why premiums have gone through the roof.

Capping jury awards does not lower malpractice premiums. To the contrary, states with caps on damages have average insurance premiums that are 9.8 percent higher than insurance premiums in states without caps (according to *Medical Liability Monitor*, October 2004). Doctors in states with caps

have actually suffered a significantly larger increase in insurance costs than doctors in states without caps (according to the *Weiss Report*, June 3, 2003).

In 2004, the insurance companies managed to turn this into a fight between lawyers and doctors. In reality, it is a fight between the victims of medical mistakes and the insurance companies.

Weeks ago, I met with the parents of a toddler who was the victim of a catastrophic medical error. The case arose in a jurisdiction where damages are capped. The dad asked how it could be that his daughter, who will suffer for the rest of her life, can't even receive enough money to pay all her medical bills and compensate her for her injuries.

In 2005, I hope members of the public will ask one important question: If a doctor makes a mistake in my care, will I get fair and complete compensation?