

# Summary of the *Washington Post* Op-Ed Piece on National Medical Liability Reform By Howard and Brennan

By Kenneth Y. Pauker, M.D., Associate Editor

In an Opinion/Editorial published in *The Washington Post* on January 25, 2004,<sup>1</sup> Philip K. Howard, Chairman of the legal reform coalition Common Good,<sup>2</sup> and Troyen A. Brennan, a patient safety expert and Professor of Medicine at Harvard Medical School, argue that the current crisis in American health care must not be “wasted” by doctors campaigning to institute band-aid treatments like capping damages to stem the rise of malpractice insurance rates.

Howard and Brennan opine that the “‘perfect storm’ of needless errors, unaffordable cost increases, declining access, inadequate accountability and frustrated professionals” will not be tamed without confronting the fundamental disease: “an ad hoc legal system that has infected health care with a debilitating distrust.” The contention by much of organized Medicine that caps on non-economic damages are a good first step is really an unfortunate diversion because it tends to focus all of the reform energy incorrectly on what is certainly a painful symptom, but by no means the nidus: a cancer-like legal system “that is corroding the very foundations of health care and is destructive of the interests of both providers and patients.”

They are looking to add to the current debate a discussion of how law should work within health care. They see the law not as “some sort of sacred mandate but a tool to serve the common good.” They have concluded that “a system of justice must be created that makes deliberate judgments—reliable for patients and providers alike—with improved patient care as the primary goal.

Those who distrust the system of justice hide mistakes and uncertainties. Resources are squandered in defensive testing. Accountability for mistakes is unreliable at best, and often absent altogether. Justice has been shown in studies to be basically random. In tragic circumstances, huge judgments are awarded against doctors who did nothing wrong, while inept doctors use the law to keep their ability to continue practicing.

## **National Medical Liability Reform–Cont’d**

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Howard and Brennan argue for a new fundamental approach wherein the focus is on setting reliable standards for good medical care. They note that many patient safety advocates argue for a new system of medical justice, “including a special health court or administrative compensation scheme that could deliver deliberate, binding rulings on standards of care.”

Finally, they reject the notion that juries are “democracy in action,” countering that “Justice is supposed to be delivered by the rule of law, not a kind of running plebiscite.”

<sup>1</sup> [http://cgood.org/news-all/item?item\\_id=42814](http://cgood.org/news-all/item?item_id=42814)

<sup>2</sup> <http://cgood.org/>

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