

# Commentary

## Jackpot Justice Takes a Hit

John Steele Gordon | 06.29.2012 - 3:20 PM

Overtuning the veto of Democratic Governor John Lynch, the New Hampshire legislature has enacted a significant reform of medical malpractice, one that can serve as a model for other states.

You can find the [details](#) at the Cato @ Liberty website of the Cato Institute, by my friend Walter Olson. Briefly, it gives plaintiffs in medical malpractice claims incentives to solicit an early offer of settlement on economic losses from the defendant. If the plaintiff accepts the offer, pain and suffering compensation would also be paid by the defendant, according to a scheduled assessment as well as “reasonable attorney’s fees.” If the plaintiff turns down the offer, however, and fails to get at least 125 percent of the original offer from a jury award, then he would have to pay the defendant’s reasonable legal fees and expenses.

Under this new procedure, the plaintiff gets his case settled, and his compensation, quickly. He is made whole and gets on with his life. The defendant also has an incentive to settle quickly to avoid huge attorney’s fees of his own and the threat of an off-the-wall jury award.

The losers here are the tort lawyers. Tort lawyers, needless to say, opposed this reform tooth and nail because it seriously threatens to cut them out of the action. They much prefer pain and suffering awards to be settled by juries, which can be swayed by their histrionic talents as much as by the facts. They don’t want reasonable attorney’s fees, they want huge jury awards they get a hefty chunk of by means of a contingency fee arrangement. But tort lawyers are economic parasites, creating no wealth whatsoever, just transferring it from one party to another and taking a big cut of it (often a third, sometimes more) in the process. They deserve no consideration here. Besides, the plaintiff is free to stick to the old system, take his chances with a jury, and wait years for a final resolution.

If the new reform works as intended, the price of malpractice insurance in the state will go down, reducing upward pressure on medical costs and thus the cost of medical insurance for the average person. And, because good ideas always spread, it will make its way to other states.

The perversion of tort law for the benefit of tort lawyers in the last half century has been a disgrace to the country, and a very expensive one, too. This looks like a big step in the right direction.