



EDITORIAL

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FAST TRACK

State ballot initiatives can help, or make matters worse

Nevada voters bring back sunny skies

Physicians have been fleeing Nevada the past few years because of escalating liability insurance costs, which, by 2002, were double those of neighboring California. A dark cloud of anxiety began to loom over the people of Nevada, as access to care dwindled.

News reports told story after story of doctors closing their doors, and of patients seeking in vain or driving long distances to see a specialist. Even at tertiary care centers, specialists in high-risk fields, such as neurosurgery, became unavailable.

Last fall, Nevada citizens made a decisive move to end the crisis by voting for a ballot initiative named “Keep Our Doctors in Nevada,” known as KODIN. It passed by a huge margin: 59% to 41%. KODIN has features of the California Medical Injury Compensation Reform Act (MICRA), including a cap on noneconomic damages, a sliding scale for plaintiff attorney contingency fees, a limit on joint and several liability, a periodic payment rule, and a collateral source rule. KODIN will help stabilize premiums in Nevada so that doctors can keep their practices open.

The Nevada Trial Lawyers Association fought zealously. Lawyers sued to remove the initiative, alleging it violated the state constitution. That tactic failed, and sunny skies returned.

Meanwhile, in the Florida elections, voters passed an initiative that included a sliding scale for plaintiff attorney fees—and they also passed measures endorsed by trial lawyers: patient and lawyer access to hospital peer-review material, and a “3-strikes and you’re out” rule to de-license physicians who have lost 3 liability suits.

In sharp contrast, Nevada defeated 2 ballot initiatives supported by trial lawyers:

- Ballot Measure 4 would have permitted outside parties to closely review insurers’ revenues and expenses. Advocates hoped that forcing open the books would bring rate relief, but it could have driven insurers from the state, to avoid unnecessary scrutiny by plaintiff attorneys.
- Ballot Measure 5 would have increased the potential liability of corporations accused of injury, and would also have guaranteed that government could not regulate plaintiff attorney contingency fees.

Dr. John M. Nowins, president of the Clark County Ob/Gyn Society and treasurer of the KODIN campaign, helped organize a grassroots effort to energize physicians and their patients to support KODIN.

Risks of state-based reforms. Nevada’s success proves that state-based efforts can bring meaningful reform. However, passage of the 2 Florida initiatives demonstrates the risky aspects of a state-based approach. Trial attorneys are likely to back pro-plaintiff attorney initiatives wherever physicians support tort reform through ballot initiatives. If they succeed, liability could deteriorate even further.

The US Senate is the sole remaining barrier to federal legislation to simplify the complex, risky state-by-state strategy.

Still, I am glad the outlook has brightened for the people of Nevada.

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