

NY'S MISSING DOCTORS

July 8, 2007 -- There's hardly a more efficient way to damage commerce and, eventually, government itself than to construct a legal system that encourages frivolous suits. Litigation Lotto works just like the real thing: The prospect of a huge cash payout tempts thousands to play, egged on by trial lawyers hoping to swallow up the winnings. New York doctors know the routine only too well, having long labored in what the Pacific Research Institute describes as the third-worst tort climate in America.

The latest indicator that something's amiss came with last week's announcement from the state Insurance Department that premiums for medical-malpractice insurance are jumping 14 percent this year - the biggest hike since 1993. Doctors will see premiums climb as high as a quarter-million dollars, nearly doubling rates from just five years ago.

The hikes disproportionately affect doctors facing the brunt of litigation - that is, providers of specialty services like obstetrics. According to the American College of Obstetrics and Gynecologists, 92 percent of New York Ob/Gyn physicians say they've been sued at least once. "In [upstate] Oswego County, there is no longer an obstetrician who will take on high-risk pregnancies, and attempts to get someone to come to that county to do that have not been successful," said Gerald Hoffman, executive vice president of Onondaga County Medical Society.

On Monday, Gov. Spitzer announced, "The medical-malpractice insurance market has reached a crisis level." Spitzer has convened a task force, headed up by state Insurance Department Superintendent Eric Dinallo, to "study the issue." Which is akin to convening a commission to determine what to do about the broken pipe flooding your house.

What ails New York's liability insurance market has already been amply diagnosed; prescriptions have been written. With no monetary caps in crucial areas like non-economic and punitive damages, loose standards for expert testimony and the determination of negligence, New York's laws leave doctors vulnerable. States that have enacted these reforms enjoy lower premiums than those that have done nothing.

Fixing this crisis will take more than a task force. It will take action. And with Assembly Speaker Sheldon Silver (who moonlights with the tort law firm of Weitz & Luxenberg) effectively controlling the debate on both medical malpractice litigation and tort reform, action of any sort is a very long way off.

Innocent victims need their day in court, for sure. But not while they are holding a Lotto ticket.