

Survey finds lawsuit abuse has significant effect on small business

Easton nurse practitioner says lawsuit abuse forces health care providers to practice defensive medicine

By **RICHARD McNEY**
Editor

According to a recent online survey of Maryland's small business owners, the impact of lawsuit abuse on small business in the state is substantial. The survey, sponsored by Maryland Citizens Against Lawsuit Abuse (MDCALA) and the National Federation of Independent Business, found that more than 92 percent of Maryland's small business owners believe that the number of lawsuits filed against businesses in Maryland has hurt the state's economy. Almost one third of small business owners were sued in the past five years and 42 percent were threatened with a lawsuit during the same period, according to the report. The legal situation in the state has led nearly 8 in 10 small business owners to be concerned that their business may be sued in the next five years.

MDCALA is a nonprofit, nonpartisan grassroots watchdog organization dedicated to educating the public about the costs and consequences of lawsuit abuse. The organization has the goal to help restore balance, fairness and common sense to the civil justice system by shining a light on frivolous lawsuits and abusive personal injury lawyer tactics.

MDCALA seeks to educate Maryland citizens about the changes needed to stop lawsuit abuse through a variety of education and outreach activities including promoting jury service and encouraging personal responsibility, according to Executive Director Todd Lamb.

The healthcare industry in Maryland has been greatly affected by lawsuit abuse, according to Susan Delean-Botkin, who is a certified registered nurse practitioner at Family Care of Easton and recently joined MDCALA's board of directors.

"As a nurse practitioner, she sees first hand how lawsuit abuse is harming our health care system," Lamb said.

Delean-Botkin has been a family nurse practitioner in Easton for 12 years and is the legislative chairman of the Nurse Practitioner Association of Maryland. "In my many years of service in this profession, I have seen how medical care suffers as a result of the cloud that lawsuit abuse imposes upon our industry as well as to the patients we serve," she said. "I am honored to be a member of MDCALA."

She said 40 to 50 percent of lawsuits against health care providers are unsubstantiated.

"We practice very conservatively because of the lawsuit threat particularly in the State of Maryland," she said. "We don't have tort reform here, malpractice insurance is high and we order tests that we don't have to in order to protect ourselves rather than the patients."

She added that health care professionals spend \$18 billion nationally a year on tests

and procedures just to prevent lawsuits or to cover themselves in the event there is a lawsuit. "We practice very defensive medicine," she said. "It costs the taxpayers, insurance industry and the entire health care industry in time expended and money to perform procedures."

Delean-Botkin, who worked as a nurse at George Washington University Hospital's emergency room in Washington, D.C., prior to coming to Easton, said that she has never had a lawsuit against her, but some of her colleagues lives have been disrupted by lawsuits.

"What a lawsuit is doing is questioning your judgment and that creates a lot of soul searching for the individual," she said. "I have known people who have actually stopped practicing even though the lawsuit was subsequently dismissed as groundless."

Health care professionals are human and make mistakes, but the lawsuit abuse in the state makes it difficult to practice the way a health care provider should, she said.

"We all are in this business to help people, to care for people," she said. "I have never known anyone in this industry to hurt people."

Health care in Maryland was in a "crisis" before the recession, with physicians and nurse practitioners leaving the state because of a "perfect health care storm," she said. The state's health care problems other than lawsuit abuse include poor reimbursement by the insurance companies, a growing number of older patients who require more care, the increasing cost of medicine and an insufficient number of primary care providers, she said. The recession has only increased the problems with the rising number of uninsured or underinsured, she said.

The situation is amplified on the Eastern Shore, which has a 60 percent physician shortage and a large older population — Talbot County has the highest average age in the state, she said. Health care providers on the Eastern Shore get paid less money for the same services offered in Annapolis, she said.

"Malpractice insurance is so high in comparison to your reimbursement that you can't stay," she said.

Shore Health System and the University of Maryland Medical System are trying to help private practices on the Eastern Shore recruit primary care physicians, she said. Family Care of Easton has been trying to recruit a primary care physician unsuccessfully for the last four years. The practice consists of Delean-Botkin, fellow nurse practitioner Carol Knud-Hansen, and I. Allen Webb, MD, who works on a part-time basis. The two nurse practitioners see most patients.

Without the appropriate primary care physician base, Delean-Botkin suggests that the Shore turn to nurse practitioners. Nurse practitioners provide much of the same care traditionally provided by physicians, maintain close working relationships with local physicians and can serve as a patient's regular health care provider.

Delean-Botkin said that Maryland needs



PHOTO BY ROXANE DOSTER WATTS

Nurse practitioner Susan Delean-Botkin irrigates the ear of patient Winona Wagner. Delean-Botkin is on the Maryland Citizens Against Lawsuit Abuse board of directors.

Other Stats from the Survey

- More than 3 in 5 think that the number of liability lawsuits is increasing.
 - 91 percent believe the number of lawsuits filed against businesses in the state has a negative impact on business growth and prosperity.
 - 85 percent think that lawsuit abuse is a major or significant problem for the state's business climate.
 - 93 percent believe personal injury lawyer advertising encourages people to sue even if they have not been injured.
 - 70 percent have seen an increase in business owners' insurance liability coverage over the last few years.
 - 74 percent think Maryland needs to pass new laws to protect business in the state from frivolous or unfair lawsuits.
- If small business owners in the state could be assured they would have greater protection from liability lawsuits, Maryland small business owners said they would be able to:
- Expand in Maryland (45 percent).
 - Hire more employees (38 percent).
 - Improve facilities or purchase new equipment (40 percent).
 - Increase their offerings to customers (48 percent).

tort reform, but it is a difficult issue because the legal community is not behind it. In the meantime, she continues to get the word out about Maryland's health care crisis.

"Maryland is number one in education,

so there is no reason why we shouldn't be number one in health care too," she said.

For information about the Maryland Citizens Against Lawsuit Abuse, visit www.mdcala.org.

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