



What the devil does the doctor mean?

By Jim Waters

The devil's missing from Gov. Ernie Fletcher's latest proposal to bring medical-liability reform to Kentucky.

His plan creates an "independent board of medical professionals" to determine the merit of lawsuits against doctors. But the details – where the devil lies – remain ghost-like. Perhaps the devil got all caught up in Halloween, or maybe he's "gone down to Georgia" to fiddle around.

The governor began his administration promoting capping noneconomic damages in medical-malpractice lawsuits. Apparently, he's given up on being able to get that idea through a legislature filled with lawyer-legislators.

So, give the governor credit for at least trying to address the problem – even if the details are missing.

Medical-malpractice lawsuits really don't get filed that often in Kentucky. And there aren't that many high-dollar awards. But Fletcher says it's the risk of lawsuits that drives up malpractice premiums, and drives doctors out of the state.

Now that's scary.

In a Business First article, Dr. Kimberly Alumbaugh, recognized as one of Louisville's top OB/GYNs, and Dr. Dan Varga, past president of the Kentucky Medical Association, bemoaned the fact that almost 60 percent of Kentucky's in-state medical school graduates "choose to leave the state to establish their clinical practices after graduation."

Varga and Alumbaugh also lament a survey showing Kentucky with "a net loss of more than 800 physicians from 2000 to 2002, with particular impact occurring in high-risk specialties such as obstetrics, anesthesia, neurosurgery, surgery, orthopedics and emergency medicine." No babies have been born for four years at Knox County Hospital in Barbourville and Ashland's Bellefonte Hospital. Escalating medical-liability insurance rates forced both facilities to close their obstetrics departments in 2003. Even former KMA president and family physician Dr. Greg Cooper of Northern Kentucky dropped his obstetrics practice five years ago – after his insurer stopped offering malpractice coverage and his new carrier would only cover Cooper if he stopped delivering babies. Opinions abound concerning the reason for this acute case of "physician flight." And Fletcher isn't the only doctor who said that lack of medical liability reform remains at the heart of the matter.

However, the truth is that this isn't just about "those greedy lawyers." I actually know some who aren't.

Bowling Green's Dan Rudloff, a hardworking attorney, does a lot of good for people.

Democrat Dan says Fletcher's proposal "sounds" reasonable. But the devil must turn up before he can commit

to it, he said.

“I wouldn’t have a problem with that because it wouldn’t bar the little guy from the courthouse,” he said. “My only concerns would be: Who would be on the panel? Who appoints them? Would they properly reflect the demographics of our state?”

Fair questions.

Both insurance companies and attorneys want to know: If the governor appoints board members, can review of proposed lawsuits remain free of political pandering?

Rudloff rightly points out that lawyers don’t establish the high premiums medical practitioners must pay in order to stay in business.

Concerning Fletcher’s point about the risk taken by doctors, Rudloff said that attorneys who take on medical-malpractice cases also take a risk.

“Lawyers representing doctors are getting paid hourly, while lawyers representing the plaintiffs only get paid at the finish line,” he said. “If it’s not a really good case, you’re not going to find a lawyer that’s going to take it.”

Besides, suing is easy but winning isn’t, he said.

“It’s not like the plaintiffs go into court and the judge signs the check,” he said. “Doctors are usually held in very high esteem in the community. Anytime you’re suing a doctor, you’re not taking on God, but you’re taking on someone right under God.”

And so from his perspective, if doctors are right below God, then does that mean the insurance companies fall right above, well, you know who?

I’m sure of neither. What I am sure of is that both sides await the devil’s appearance.

Jim Waters is the director of policy and communications for the Bluegrass Institute, Kentucky's free-market think tank. You can reach him at jwaters@bipps.org. You can read previously published columns at www.bipps.org.