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MED-MAL MATTERS

FAITH AND C-SECTIONS

A Rutgers study challenges beliefs about tort reform

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It is an article of faith among insurers, physicians and most members of a certain political party that tort liability is the primary driver of unnecessary treatment — "defensive medicine" — and skyrocketing health-care costs. The solution, according to these interest groups, is to drastically limit the amount of damages injured patients can recover, regardless of the severity of the harms and losses caused by medical mistakes. Nowhere is this faith stronger than with cesarean sections.

According to the federal government, the cesarean section (C-section) is now the single most frequently performed surgical procedure in the United States. Government statistics show the rate climbing by more than 50 percent between 1997 and 2007. By 2013, more than 32 percent of American babies were delivered by C-section.

Though the potential drivers of this phenomenon are myriad, the obstetrical community loudly and relentlessly blames malpractice liability for what it implicitly acknowledges are millions of unnecessary surgeries; in essence claiming that obstetricians routinely cut women open for no medical reason but only to avoid being sued.

The American College of Obstetricians and Gynecologists explicitly cites medical negligence lawsuits as a major rationale for doctors to perform a C-section on women who have had a prior C-section and to not attempt vaginal delivery after a cesarean section, notwithstanding the presence of the evidence-based rationale of increased risk of uterine rupture.

Doctors and their insurers clamor for "tort reform," claiming that caps on damages will cause doctors to stop performing so many unnecessary C-sections. As Dr. Jack Bianco argues, the cause of the skyrocketing C-section rate can be described in four words: " … lack of tort reform."

This is a widely held belief but are there any facts to support it?

Sabrina Safrin, a professor at Rutgers University School of Law, asked that same question and conclusively answered it by studying whether women were less likely to have a C-section when delivering in states with damage caps than in states without caps. In a study published in the *University of Illinois Law Review*, in March, Safrin presents aggregate data that "debunks" the tort reformers' argument.

Safrin explains that, unlike other studies, she approached that issue from a "bird's-eye perspective," using recent, aggregate data. This data, and her approach to it, allowed Safrin to average large and small states and different hospital types while controlling for racial, cultural, maternal age and overall health composition. The study was carried out over five years and used birth data from 2007 through 2013.

The study examined the likelihood of a woman delivering by C-section in a state where caps exist versus a state with no caps in two ways: by comparing the total number of births by C-section in damage-cap states to the total number in states without caps and by comparing the average C-section rate in the two groups of states. The results are startling and indisputable:

"From a nationwide perspective, we found no statistical difference in C-section rates between states with damage caps and those without for both 2007 and 2013."

That finding bears repeating. There is zero statistically significant difference in the C-section rates in states with damage caps and those with no caps. Indeed, the C-section rate for births in states with damage caps was nearly 1 percent higher than in states with no caps. Which means that a woman is more likely to deliver by C-section in a state with caps than in a state with no caps. As Safrin concludes, reducing malpractice exposure through damage caps does not affect the rate of C-sections.

But if the fear of lawsuits is not the cause of high C-section rates, what is? The answer appears to lie in a theme we have repeatedly explored; in a word, money.

As Safrin points out, there is a "perverse" economic incentive to deliver a baby by C-section. Obstetricians are paid on average about 30 percent more for a C-section delivery than a vaginal delivery, earning about $1,270 more from commercial payers and $618 more from Medicaid. This is so even though a safe vaginal delivery takes significantly more time and requires more patience from both mother and doctor.

On average, a normal first-time vaginal delivery takes 6 ½ hours, with many women — and as Safrin points out, their doctors — laboring much longer. C-section is just plain easier. As obstetrician Aaron Caughey stated on National Public Radio: "There's no money in being patient in labor."

Faith can be defined as a strong belief in a particular doctrine or idea based on spiritual apprehension rather than proof or facts. When a special interest group proposes limiting a catastrophically injured child's Seventh Amendment rights, however, that child deserves an analysis based solely on facts. Safrin has shown us why. CL

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