Playing not to lose may hurt Democrats

E.J. DIONNE

Democrats have a paradoxical problem that explains the downbeat assessments of their chances in this year's congressional elections. They are so close to controlling both houses that they are petrified of doing anything that might get in the way. But their fear of failure threatens strategic gridlock. Worrying too much about losing is not a strategy for winning.

The problem presents itself differently in the Senate, where Democrats have a one-seat majority, than in the House, where Democrats are six seats short. But it's the same problem.

In the Senate, a handful of conservative Democrats can upend Senate leader Tom Daschle's control at any time. Asked how like-minded colleagues dealt with potential rebels to their right, one liberal senator replied, "With great kindness." No one, he explained, wants to encourage conservative Democrats to switch sides.

In the House, Southern and rural Democrats fear national party messages that would be too liberal for their districts. After the 2000 election, said one House Democratic strategist, "the moderate members of the caucus became absolutely convinced and adamant on the topic that a national message would hurt them, that the gun control issue had killed them and that abortion hurt them significantly." Yet many Democrats, including moderates, also say that if the party doesn't develop national themes, Republicans will dominate the political conversation throughout the 2002 campaign. President Bush's continuing popularity and increased influence in the wake of Sept. 11 make the Democrats' problem even more urgent.

"There's got to be a compelling national message that sets the terms of debate," says Rep. Rosa DeLauro of Connecticut, who is in charge of developing just such a message for House Democrats. "You have to shift things in favor of Democrats across the board."

But she embraces the political equivalent of the Hippocratic oath in acknowledging party tensions. "Our goal should be to do no harm locally," she says.

DeLauro argues that issues working for Democrats before Sept. 11 — Social Security, a patients' bill of rights, prescription drugs for the elderly and pension security — still help now.

But Steve Rosenthal, political director for the AFL-CIO, credits Bush with muddling these themes. "The Republicans want an election about war, values and taxes," Rosenthal says. "Bush has been successful in taking the other issues off the table one by one. The Democratic Party is now scrambling to catch up."

Rep. Chet Edwards is a moderate Democrat who could be hurt by the wrong national message. His district includes Crawford, Texas, where the President has his ranch. Edwards, however, agrees with DeLauro that Democrats need national themes.

"A good national message for Democrats is still the simple one: that we are fighting for average working families," he says. The old slogan could work this year,

If we really want to lower the cost of malpractice insurance, it is essential that we require the full disclosure of all medical mistakes

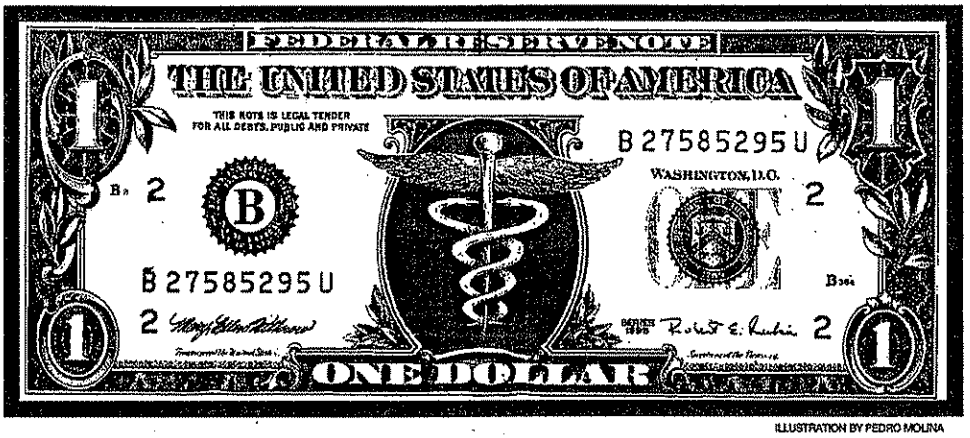

ILLUSTRATION BY PEDRO MOLINA

Malpractice 'crisis' is a sick joke

BY ABBOTT BROWN

There is a campaign being waged in New Jersey against the victims of medical malpractice. Doctors claim that they must leave the practice of medicine because of the cost of malpractice insurance. The malpractice insurance industry claims that there is a litigation explosion and seeks legislation that will deprive malpractice victims of their day in court.

However, a careful review of the facts reveals that there is no legitimate reason medical malpractice insurance is not available and affordable in New Jersey. The number of malpractice suits in New Jersey has declined from 2,200 in 1994 to 1,613 in 2001, a decrease of more than 25 percent. This is due to a 1995 law requiring that a medical expert state under oath at the beginning of every case that the claim has merit.

The decline in cases is confirmed by New Jersey's largest malpractice insurance company, the Princeton Insurance Co., which admits in its annual report that it tried only 366 medical malpractice cases to a conclusion in 1998, only 347 such cases in 1999 and only 274 in 2000.

Furthermore, despite recent claims by malpractice insurance companies of "jackpot jury awards," a study of more than 8,000 cases by the Medical Inter-Insurance Exchange, the state's second-largest malpractice insurance company, has concluded that in New Jersey "physicians usually win cases in which the physician's care was deemed to meet community standards."

The company also determined that "the amount of payment correlated closely with the severity of the injury" and that "unjustified payments" are uncommon. Similarly, the federal government has reported that during a 10-year period ending in December 2000, there were only 5,556 medical malpractice payments by physicians in New Jersey. The median payment was $115,000, ranking New Jersey 13th.

These statistics explain why the Princeton Insurance Co. said in its annual report that it has enjoyed three "stellar" years in a row. In fact, for the last year available, 2000, Princeton reported net profits of nearly $30 million, an increase of 22 percent over the prior year. The Medical Inter-Insurance Exchange has reported that it has lost money in other states, and therefore it intends to "focus company operations on New Jersey ... where there is a history of profitability." The company anticipates "increasing after-tax returns to the company in future years."

Due to the absence of competition, Princeton and the Medical Inter-Insurance Exchange dominate the market in New Jersey. Despite their increasing profits, these two companies are raising rates to make up for bad business decisions in other states, recoup investment losses and further increase profits.

This has created a false sense of a crisis. The insurance companies are using this manufactured crisis to ask the Legislature to deprive victims of malpractice of their day in court.

Eliminating accountability for medical mistakes would reduce the incentive to be careful. Many medical procedures and hospital practices have been made safer as a result of lawsuits. In addition, New Jersey recovers more than $5 million a year in reimbursement for medical bills paid to victims of personal injury claims. If we eliminate malpractice claims, these sums would not be paid by the person who caused the injury but by the taxpayer.

What New Jersey needs is regulation of the medical malpractice industry. Princeton and the Medical Inter-Insurance Exchange should be required to obtain approval from the state insurance department to increase premiums, just as other insurance companies must. We should also reinstate the Medical Malpractice Liability Insurance Act, which already provides for a medical malpractice reinsurance recovery fund.

However, the best way to reduce the cost of malpractice insurance is to reduce the amount of malpractice. Depriving malpractice victims of fair compensation for their injuries is not the way to do this. Rather than inflicting more punishment on victims, we must identify and eliminate bad doctors. Multiple studies in other states have shown that a relatively small number of doctors are responsible for a disproportionate number of lawsuits.

Finally, if we really want to lower the cost of malpractice insurance, it is essential that we require full disclosure of all medical mistakes. In New Jersey, knowledge of most malpractice is buried with the patient. Every hospital in New Jersey claims a so-called "privilege of self-critical analysis," which allows it to refuse to disclose to a patient's family that a loved one was the victim of malpractice.

When veterans hospitals decided to promptly and fully disclose medical errors and offer fair compensation, litigation costs were dramatically decreased.

To err is human and to forgive divine. But burying medical malpractice mistakes should be a crime.

Abbott Brown, a partner in Bendit Weinstock in West Orange, is a certified civil trial attorney and an adjunct faculty member teaching medical malpractice law at the Seton Hall University School of Law. He is the author of two books, "New Jersey Medical Malpractice Law" (2001) and "New Jersey Medical Malpractice Cases" (2000).

Forme newscas comes w a laugh tr

There is much to be hop current Republican prim Senate. And the thing t for most is that Diane Allen do out before she provides us with laughs to which we are entitled ers.

Allen, for those who don't k famous in South Jersey becaus to be a television news anchor phia. Based on the fame she ac that job and on a set of politica would be considered left wing Democrat, Allen wants the Rep nomination to run for the U.S. New Jersey.

She is considered a serious contender. That tells you all you need to know about the state of the Republican Party in New Jersey. But it doesn't tell you all you need to know about Allen. You will be learning more about her in the coming weeks. Here is a brief introduction.

When she was young, Allen in the Philadelphia television m was an anchor. In other words, ability to read things while look That doesn't seem like much o it is highly prized in the world c It is so highly prized that in 198 one station to go to a competit willing to pay her more. She to tage of the free market, in othe

In 1992, however, the TV pe fire her so they could hire a for queen who could read as well b better. Again, this was the free work. But this time it was work Allen. She sued.

"I was stunned," she said at "Female anchors can hold thei shouldn't be hired as window d

An apt metaphor. A windov vision screen, is something you through. You are more inclined through it if there is something on the other side. That is the s vision news. And that is why pe want serious news read the ne

The late Mike Royko said it column he did on the battle be female newscasters on a morni Royko p that fro the Chic une, "I c pea sho directio reporter ter quali more ex than the questio he turn in the m Royko o wanted more attractive than the one t looking back from his mirror.

A politician has to be smart, like Sen. Bob Torricelli. Not like Diane Allen, who wants his seat.

Me, too. That's why the tail get the big bucks and we print spend our spare time scouring sides for recyclables. TV is not ity. It's about looks.