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Firms feeling the effects as law limits malpractice cases
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The woman entered the office of attorney Robert F. Linton Jr. earlier this year with what looked like a textbook medical malpractice case.

Following what was supposed to be routine abdominal surgery, the woman had developed a serious infection that caused her to go into septic shock. Her bowel had split open and began emptying its contents inside of her. The problem wasn't diagnosed for several days.

No permanent damage was caused, but she wanted to sue.

"I had to turn her down," said Mr. Linton, a partner at the Cleveland firm Linton & Hirshman.

Mr. Linton's refusal wasn't because the woman didn't have a case. It was because the maximum in punitive damages the woman could have expected under new malpractice laws would not have been enough to justify going to court, Mr. Linton said.

Because lawsuits can take 18 months or longer to go to trial, the first lawsuits covered by a state law passed in 2003 that limits punitive damage award amounts are beginning to trickle into Ohio courts. Under the old rules, which did not cap the amount of punitive damages, Mr. Linton said the woman who approached him could have won as much as \$700,000 in damages.

The new law, which went into effect in April 2003, restricts noneconomic damage awards to a maximum of \$500,000. Attorneys say they have been forced to turn low-income clients away because those individuals cannot generate enough in the way of economic damages, which are not capped, to justify going to court.

Waiting for fallout

Losing that business might have negative consequences for some attorneys. Several attorneys said they have heard grumbling from colleagues who are insisting they will need to leave the medical malpractice field entirely.

"It'll be interesting to see if people quit," said Stephen E. Walters, managing partner at the Cleveland office of malpractice defense attorneys Reminger & Reminger.

In anticipation of the changes in the medical malpractice arena, Weisman, Kennedy & Berris Co. LPA in Cleveland in 2003 eliminated three or four staff

positions, including a delivery person and full-time nurse paralegal. Weisman Kennedy now is mulling further job cuts.

"Tort reform had a lot to do with it," partner Richard Berris said.

The new law has a flat cap of \$500,000 on permanent damages - such as the loss of a limb - and \$250,000 on less serious injuries.

The law was enacted in response to complaints of rising malpractice insurance premiums that in some cases were driving doctors out of state in search of lower rates. Proponents say the cap will control so-called runaway jury verdicts and will discourage the filing of frivolous lawsuits.

Critics, meanwhile, say the measure is unnecessary as few malpractice cases actually get to court because of the stringent standards necessary to bring a claim.

The Cuyahoga County Clerk of Courts does not break out total medical malpractice suits filed. However, based on statistics kept by Reminger & Reminger, the number of cases filed in Cuyahoga County has dropped to 539 in 2004 from 764 in 2002, a decrease of 29.5%.

If it sticks, cuts will come

Twice before, in 1975 and 1996, the state has put malpractice limits in place. And twice, in 1991 and 1999, the state Supreme Court struck the laws down as unconstitutional.

If the current law stays in place, other medical malpractice firms will need to follow Weisman Kennedy's strategy of cutting jobs, Mr. Berris said.

"We're not going to be making the living we've had in the past," he said. "I think that's a given."

Zeev Friedman, of The Friedman Law Firm in Beachwood, expects his practice to survive thanks to its heavy use of advertising. Attorneys who can't afford or don't care to advertise their services might not be so lucky, Mr. Friedman said.

"They could possibly be going into different fields," Mr. Friedman said. "They could go to divorce work, for example. It's just not going to be economically feasible for them to do it anymore."

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