# EDITORIAL

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# How John Edwards changed case law and multiplied liability

Rapidly increasing practice costs plus stagnant or decreasing revenues continue to plague Ob/Gyns. Professional liability insurance is the fastest-growing of these costs—thanks largely to the trend toward multimillion dollar payments in personal injury cases.

John Edwards, the Democratic Vice-Presidential candidate, is one of the most successful personal injury attorneys in North Carolina history. In his recent book *Four Trials*, Edwards recounts his success in cases where the plaintiffs suffered greatly.

What he fails to recognize, however, are the major negative effects large jury awards may have on medical care. With this unbalanced view of how runaway juries impact the medical profession, Edwards fails in his duty as a potential Vice President to be a moderate voice on complex social issues.

**Edwards' tactic of suing the hospital for a doctor's decisions was a novel change.**

**Case snapshot.** Following is a description of *Jennifer Campbell v Pitt County Memorial Hospital*, from Edwards' book:

In 1979, an Ob/Gyn performed an elective vaginal delivery of a footling breech fetus following a 7-hour labor. The child had Apgar scores of 1 at 5 minutes and 2 at 10 minutes, developed seizures in the neonatal nursery, and suffers cerebral palsy.

At trial in 1985, the plaintiff's experts stated that in 1979 elective vaginal delivery of a footling breech was not the standard of care. Further, they maintained fetal heart rate tracings clearly indicated the fetus was suffering low oxygenation.

The defendant physician settled prior to trial for $1.5 million. Trial proceeded with the hospital as the sole defendant.

**A new direction for personal injury suits.** In 1985 it was not customary for plaintiff attorneys to aggressively pursue the hospital, nurses, or anesthesiologists for medical decisions made by attending physicians. Edwards' approach represented a novel change in litigation practices.

The hospital was charged on 3 counts:

- **Employing nurses that acted negligently.** Edwards claimed *the labor nurses had a professional duty to challenge the physician's plan* to pursue elective vaginal delivery, and to challenge the doctor's conservative response to nonreassuring fetal heart rate tracings with their nursing supervisor.
- **Failing to ensure the informed consent for a vaginal breech delivery.** Edwards argued *the hospital should have ensured the parents understood the benefits and risks* of the procedure. Here, the consent form for vaginal delivery was signed about 80 minutes after delivery.
- **Committing corporate negligence that directly related to the plaintiff's injury.** Edwards' claimed *the hospital had the obligation to closely oversee the attending physician's medical decisions*.

**The verdict.** The jury returned a "not guilty" decision for the first charge, but awarded plaintiffs $6.5 million (later reduced to $4.3 million) for the remaining two.

**Long-term consequences.** During his career, authorities estimate Edwards won over 30 medical liability judgments of $1 million or greater.[1] Edwards claims he's proud of his success, and notes that his lawsuits fueled improvements in hospital procedures. For instance, his victories in North Carolina

caused hospital boards to ratify polices giving nurses, physicians, and other clinicians a clear chain of command to report disagreements regarding patient care.

The trial noted previously, meanwhile, evolved case law on informed consent by indicating a hospital can share responsibility for ensuring patients understand a procedure's benefits and risks. This responsibility had long resided with attending physicians.

**A major deficiency** of Edwards' book is that he does not discuss:

- the adverse impact large jury awards may have on the cost of medical care,
- the consequences of introducing costly defensive medical practices, or
- the chilling effect potential liability may have on the stability of obstetrics, neurosurgery, and orthopedics as professions.

Of great concern is the response to this book by some senior Senators—who will be key voters in determining if professional liability reform ever passes the Senate.

Massachusetts Senator Edward M. Kennedy, for example, stated, that those who read *Four Trials* will "instantly understand why lawyers are so indispensable to the 'little guy' and so hated by those in corporate America who are held accountable."

**I disagree with Senator Kennedy.** After reading *Four Trials*, I was impressed by the growing negative impact personal injury lawsuits have on our entire economic system, and the vast liability that exists with all services and products offered to Americans. Medical liability suits increase medical costs and do little to improve care.

If every adverse event in American life is cause for litigation, we risk a meltdown of our entire medical and economic system.

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## REFERENCE

1. Edwards' malpractice suits leave bitter taste. Washington Times. August 16, 2004: Article ID 20040816125950020.