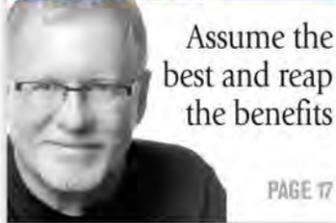


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# NHBR

Meet NHBR's Outstanding Women in Business

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## THE JURY'S STILL OUT ON *malpractice panels*



Lack of data prevents legislative committee from determining panel's effectiveness

■ COURTS

BY CINDY KIBBE

Reducing frivolous malpractice lawsuits

has long been seen as a way to reduce medical malpractice insurance rates, but separate reports released by a legislative oversight committee present inconclusive, and often contradictory, evidence about the

effectiveness of screening panels established to curtail the frequency of such suits.

When New Hampshire instituted screening panels in 2005, they were touted as a

MALPRACTICE PANELS, PAGE 10

## 'Startup' for startups adjusts

■ ENTREPRENEURISM

Innovation Commercialization Center business incubator faces startup challenges similar to its tenant companies

BY MICHAEL MCCORD

In the beginning, the concept of the New Hampshire Innovation Commercialization Center in Portsmouth was simple – every quarter, the board would choose an early-stage technology company with success potential, give it professional stewardship for a year or so, send it on its way and start the cycle again.

But as with any good plan tested by market realities, the NH-ICC has had to make game-time adjustments since it started last spring.

"The center itself is a startup in its own right," said Mark Galvin, the managing director and one of the founding lights of the NH-ICC, which is a partnership operation with the University of New Hampshire. A serial entrepreneur himself –

STARTUP ADJUSTS, PAGE 9

## 2011 'boot camp' for entrepreneurs March 24-25

Registration is now open for the 2011 Stonyfield Farm Entrepreneurship Institute, a two-day "boot camp" of networking, panels and speakers designed to inspire and help community-minded entrepreneurs grow their businesses.

Presented in partnership with Stonyfield Farm Inc., the Carsey Institute

at the University of New Hampshire and the Whittemore School of Business and Economics, the institute will be held March 24-25 at the Grappone Conference Center in Concord. New Hampshire Business Review is media sponsor of the event.

Two keynote speakers will be featured

at the boot camp: Bert Jacobs, co-founder of the \$100 million Life is Good apparel and accessories company, and Gary Hirshberg, chief executive of Stonyfield Farm and founder of the conference.

Jacobs's Boston-based company, which was launched in 1994, now sells its prod-

ucts to 4,500 retail stores nationwide and in 30 countries around the world.

Hirshberg, who first conceived the idea for the conference in 1998, designed the institute as a forum for entrepreneurs to learn about the fundamental aspects of growing an enterprise.

'BOOT CAMP', PAGE 12

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A conversation with the owner of Great New Hampshire Restaurants.

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### DRINK UP

Report finds N.H. isn't running out of water after all

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### A BUILDING EXPENSE

How long can the state continue to cover the costs of school construction?

Page 40



## Leading the Way



**Congratulations to Teresa Rosenberger on being named a 2011 Outstanding Women in Business award winner by New Hampshire Business Review!**

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## Malpractice panels

FROM PAGE 1

means of reducing the number of cases clogging the court system and their associated trial costs and to stem the rise of insurance rates.

Patterned after a similar law in Maine, New Hampshire's measure established panels composed of a judge, a lawyer and a clinician to review medical malpractice suits prior to going to trial.

The goals of the pretrial screening panels were to "weed out frivolous lawsuits" but also to lower the cost of malpractice insurance and possibly increase the number of practitioners — especially specialists in the North Country, said Sen. Matthew Houde, D-Plainfield, a member of the Medical Malpractice Panel and Insurance Oversight Committee, which reviewed the law's effects.

The question, said Houde, was, "With screening panels, are insurers going to feel more comfortable to have more business with a lessened amount of frivolous lawsuits?"

Both Houde and former state Sen. Bette Lasky, a Nashua Democrat who chaired the panel, said New Hampshire didn't have many frivolous cases to begin with.

"We don't have punitive damages here," said Lasky. "Skyrocketing high damages are not awarded here."

The panel itself did not begin convening for case review until March 2007, following months of court challenges to its own constitutionality.

According to statistics from the committee's report, provided to NHBR by the New Hampshire Medical Society, there have been some 387 cases brought to the attention of screening panels since 2007, with 147 resolved prior to panel review.

Of the 240 remaining cases 87 were waived, 84 have been heard and 69 are pending as of Dec. 10.

Only 18 medical malpractice cases have gone to a jury trial after panel review since 2007.

One conclusion of the committee report, drafted by Lasky, was that it had a difficult time evaluating the effectiveness of screening panels because of the lack of case information prior to the establishment of the panels.

"What we think we know — five years or so prior to 2005 — there were about 70 to 75 to about 95 to 100 or so lawsuits in each of the years," said Martin Honigberg, an attorney with the Concord law firm of Sulloway & Hollis who attended most the committee's hearings. He, said the New Hampshire law is patterned after one in Maine.

"Since the law has been in place, the numbers have been in the lower end of the range," said Honigberg.

Another conclusion reached by the legislative panel was that the panels were, in essence, a "first trial," since much of the discovery is done during the review.

It also was unclear what impact panels had on malpractice insurance rates, the committee concluded.

Based on information provided by the state Insurance Department to the committee, New Hampshire's malpractice rates have actually increased since 2007, although the department said it expects future pricing to be "relatively >

FROM PAGE 10  
calm."

The committee concluded that there "is currently no evidence that the screening panels have or have not affected rates."

The report also said the committee was unable to determine what effect, if any, the panels had on "the availability of medical specialists in underserved areas like the North Country" or whether panels promote "early settlement."

### Dueling conclusions

Perhaps the most contentious conclusion of the committee report was the oral and written testimony that panels "have increased the costs of medical negligence legislation" and that these costs may deter the filing of legitimate cases.

Several members of the eight-person oversight panel took issue with that conclusion.

In fact, only two people signed the main report – Rep. Joan Schulze, D-Nashua, and Lasky herself.

Timing, however, also may have played a big role in the lack of signers to the report.

Although the cover letter to the report was dated Nov. 30, 2010, much of the work was done at the time of the mid-term elections.

"I don't think the lack of signatures is indicative of anything," said Lasky.

Sen. Matthew Houde of Meriden said he and three other committee members didn't sign the main report because they wanted a bigger picture to be brought forth.

He and three other committee members drafted an addendum to the report, with all four signing it as well as Schulze.

"Those who signed the addendum were concerned that the report wasn't a full representation of all the testimony," said Houde. "The picture presented was more a picture of the trial attorneys representing litigation."

Lasky said she felt the main report "was the committee report." "I guess they (the addendum signers) felt it wasn't strong enough for the other side. The majority of the committee was OK with it," she said. "I felt the report does give a picture, but maybe not a clear picture. We did hear a lot of testimony. We heard a lot from both sides."

While most of the addendum's conclusions echo the main committee report, the bone of contention drawn by the addendum was that not only had the committee received evidence that panels increase litigation cost, it also received testimony that they lowered them as well – a point that was not stated in the report.

The addendum says that testimony from lawyers who represented defendants as well as insurance representatives "presented evidence that many claims for medical injuries are being resolved faster and with less expense than they would have had the panels not been available to the parties."

The addendum does agree with the official report by saying that that "increased costs or the perception of increased costs" might forestall some valid claims.

Houde said both the main report and the addendum also come to the same conclusion — albeit from different directions — that there simply haven't been enough cases to determine what effect, if any, screening

panels have had on malpractice cases, insurance rates or even increasing the number of specialists in the North Country.

"There hasn't been enough time to develop trends," said Houde. "There was consensus in implementing screening panels to achieve results, but in my opinion we don't have enough data to determine if we're achieving those results."

Lasky agreed, saying, "We can't make any decisions. There is simply not enough data. Panels should still be looked at and more data compiled. A future Legislature may or may not approve an oversight committee."

One area of the panel's effectiveness that is a little clearer is that, with slashed budgets in New Hampshire's judicial system, pretrial screening panels do keep claims moving through the court system, said Scott Colby,

executive vice president of the New Hampshire Medical Society, which advocates on behalf of the state's physicians.

"With the cutbacks in the court system, the panels are another avenue toward resolution," said Colby.

Not only is the effectiveness of the screening panels still in the air, so is the legislative oversight committee itself, which expired Dec. 31, 2010.

Both the report and the addendum recommended renewing the committee for another two years.

Other recommendations from the reports include some consideration made toward the feasibility of legislative funding for screening panels and to continue to look for options to process and pay claims without litigation.

There also was a recommendation from both reports that "offers of proof at the panel hearings without the finding being admissible at a jury trial" be explored further.

Sen. Jeb Bradley, R-Wolfeboro, has introduced Senate Bill 17 "relative to evidence of admissions in medical injury actions," which would not allow statements that could be construed as an apology by would-be defendants to be admissible as evidence of liability.

Also, House Bill 51, introduced by Rep. Gary Richardson, D-Hopkinton, addresses the qualifications and selection of screening panel members.

As of mid-January, a specific piece of legislation extending the oversight committee had yet to be introduced. **NBR**

Cindy Kibbe can be reached at [ckibbe@nhbr.com](mailto:ckibbe@nhbr.com).

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