

# Reply to Jonathan Carmel's Comment on Ronen Avraham: Private and Competitive Regulation of Medicine

**RONEN AVRAHAM**

Dear Editors:

Jonathan Carmel seems to like the idea of a private regulation regime where doctors would get immunity from a suit if they followed guidelines promulgated by private firms. The private firms would face liability for issuing sub-optimal guidelines. Carmel suggests going one step further and taking tort law out of the system altogether. In Carmel's world, a patient chooses from a class of insurance plans (gold, silver, bronze, etc.) which follow a given set of guidelines. The patient could not sue her doctor or guideline promulgator as long as she was treated under the guidelines she signed up for. For example, a patient who

purchased "bronze" coverage, which provides that she receive a skull x-ray if she has a possible head injury, could not sue if she was injured because she only received an x-ray, not a CAT scan, even though the CAT scan might be provided under other guidelines.

Unfortunately, there are several problems with this wonderful idea. First, as Jennifer Arlen of NYU and Bentley MacLeod of Columbia have shown, there are several structural problems which prevent patients from effectively contracting for optimal care, including a patient's inability to specify a treatment choice at the time of contracting, a patient's inability to determine ex ante the level of physician expertise, and

the distressed position patients are often in when they contract for medical care. Moreover, even a simple model of competition and complete information would predict that the price of many medical treatments and drugs (e.g., those protected by patents) should greatly exceed their marginal social costs because of limited entry due to patent protection or high fixed costs. Thus, tort law may still be necessary to facilitate optimal provision of CAT scans.

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#### REFERENCES AND FURTHER READING

**Arlen**, Jennifer, W. Bentley MacLeod (2005) “Torts, Expertise and Authority: Liability of Physicians and Managed Care Organizations,” *The RAND Journal of Economics*, 36(3): 494–519. [http://www.rje.org/abstracts/abstracts/2005/Autumn\\_2005\\_Arlen.html](http://www.rje.org/abstracts/abstracts/2005/Autumn_2005_Arlen.html).

**Avraham**, Ronen (2009) “Private and Competitive Regulation of Medicine,” *The Economists’ Voice*, 6(8): Art. 2. <http://>

**Carmel**, Jonathan (2009) “Comment on

Ronen Avraham: Private and Competitive Regulation of Medicine,” *The Economists’ Voice*: 6(8): Art. 3. <http://www.bepress.com/ev/vol6/iss8/art3>.