

## What is the Truth about Medical Malpractice Rates?

No doubt, in this political season, you have heard of the medical malpractice “reform” dispute. If you are a doctor or related to someone in medicine, your reflexes tell you that it must be necessary. If you are a patient who never suffered an injury through inadequate care, your reflexes might also lead you to worry about the availability of medical care and its cost. Your inclination may be to fall in line with those pushing for reform with dramatic accusations. The problem is, those accusations are unsupported by fact and are made with the recognition that whether you speak the truth or not, speak it frequently enough and, like mud, it will stick. If you are a patient who has been injured through substandard care, your instincts and experience lead you to question why the medical profession seeks to insulate from responsibility those few individuals who cause injuries by their medical carelessness, when individuals in other professions are responsible when they do something wrong that causes injury. Responsibility to someone you have harmed through carelessness is a right that preexists the Constitution. A recent editorial by the Editors of the Trenton Times newspaper echoes what many attorneys have known for quite some time: “... information just released by order of a federal judge showing that confidential settlements, jury awards and other payouts made by insurers on behalf of physicians have been declining since 2001, even as insurance premiums soared ... It seems clear by now, however, that other factors, possibly including insurance industry practices, are helping cause those high premiums.” (The Times, Thursday, June 10, 2004, page A18) Those who push for this reform have their own agenda that is blind to the plight of the injured and the majority of doctors. The problem is that we have all been made victims of the malpractice dispute and the lines that have been drawn. As usual, those who press for malpractice reform vilify attorneys. Arguments are offered about the impact of verdicts on the availability of medical care and its cost. The proven reality is that the problem does not lie with the performance of the great majority of doctors, nor does it lie with any lack of merit in the overwhelming majority of malpractice claims that are properly brought and supported. As so often happens, the battle has been launched by those who want change based upon the impact on their own profit, rather than on merit. It is the insurance industry and those it supports in politics who push for more change. The weapons they use involve select, distorted statistics.

The insurance industry, both in the managed care and liability sectors, has put the doctors in a vise, squeezed by the difficulty in receiving fair fees for care provided and pressed by rising premiums or the threat of unavailable insurance. This combination forces doctors into an adversarial position with their patients and with the legal system. This is what the insurance industry has done, pitting patient against doctor and doctor against the lawyer. One can understand the doctors being upset at the predicament in which they have been placed. The quarrel is only with whom they blame for that predicament and with the information they have been supplied by an industry that has far too much control over their medical conduct and their income. The problem is that the rancor created between the legal and medical communities is fueled by this misinformation flowing from the real “culprit”, the insurance industry, to the physicians. A missed cancer diagnoses is not always malpractice. But sometimes it is. A bad result from medical treatment is not always malpractice. But sometimes it is. The studies and facts are clear and available. The problem lies not in the verdicts. It lies not with the vast majority of well-founded cases that properly seek redress through use of one of the world’s finest legal systems. And it lies not with the vast number of good doctors, who consistently practice good medicine. It lies with the insurance industry that refuses to police itself in terms of its business practices and its dealings with those relatively few doctors that repeatedly fail to practice within the standards of their own profession. That industry arms itself (and the doctors it controls through its ability to dictate both income and insurance costs) with distortion and the easy, historic dislike of lawyers and the legal system that is so easy to cultivate. That is, until access to the courts and attorneys are needed. Insurance corporations have their attorneys with untrammelled access to the courts and virtually limitless resources to advance their own interests. It is patients’ access to the courts for protection of their rights that is being attacked and minimized. Since it is the patient’s lawyer who must advance that right, it is the patient’s lawyer and the jury system that the insurance industry seeks to whittle away. Then the insurance industry and its political spokespersons can advance their interests virtually unopposed without the threat of meaningful financial responsibility for negligently caused injury. It is the irony of the situation that the victims of malpractice – the vast majority of doctors and the injured patients – really do have common interest with lawyers in protecting the patient. The villain, the irritant, or whatever other word fits, is the big business of insurance and those in government who either misunderstand the situation or seek to protect their own interests by stepping on those who need protection. The danger is in the successful creation of a misguided debate on the wrong issues – so that the patients, the patients’ attorneys, and most of the doctors are compelled to avoid, or at least delay, focusing on the conduct of the insurance industry that is a major cause of its own problems and, by extension, the problems of the medical profession and patients they are supposed to protect.

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