Medical Malpractice
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Introduction

Medical Malpractice is defined as a preventable adverse event on a patient’s health due to negligence or malicious intent of the doctor treating him. Malpractice lawsuits can provide funds necessary to treat injuries caused by negligent doctors, but have also had an adverse affect on the quality of care and the medical profession in general.

In general, a malpractice lawsuit consists of four parts, with the burden of proof lying with the patient. They must show that the patient and doctor did in fact have a relationship, the doctor deviated form the standard of care, a preventable injury was sustained by the patient, and that the physician’s actions caused the injury.

In Defense of Doctors

In one of the country’s most litigious societies, sometimes the issue changes from one of patient rights to one of doctors’ protection. While their intentions may be pure, physicians are fallible human beings who happened to choose a profession in which the stakes are very high. Outrageous liability premiums and derision from the very people they were trying to help is driving thousands of potential doctors away from the profession. Not only are malpractice cases traumatic for the doctor, but they cost exorbitant amounts of money and time for the patient.

Certainly it is important to have mechanisms in place to protect patients from truly negligent doctors. For this reason, the National Practitioner Data Bank keeps a record of every claim brought against a doctor in the entire country. However, as wealthy
professionals, doctors often become the victims of unfounded scorn and greed. Studies consistently show that the amount of malpractice cases brought against a physician is not reflective of his talent or capability, but only of his bedside manner. A 1994 survey found that there was no difference in the average care provided by doctors who had been sued and those who had not.

One very successful instance of enforcing physician protection is proposition 12 in the Texas constitution. Sweeping torte reforms in 2003 placed a cap on non-economic damages for malpractice suits. Since then, liability rates are down and physician retention is up without any decrease in the quality of care. In fact, one of the world’s largest medical centers is flourishing in Houston at M.D. Anderson.

In Defense of Patients

The consequences of medical malpractice have been felt heavily in the United States. Medical injuries claim about 195,000 lives in the United States annually, according to a study by HealthGrades, making this the at least the 8th leading cause of death in the US. Among the findings in the HealthGrades Patient Safety in American Hospitals study were that about 1.14 million patient-safety incidents occurred among the 37 million hospitalizations in the Medicare population over the years 2000-2002. Also a notable statistic is of the total 323,993 deaths among Medicare patients in those years that developed one or more patient-safety incidents, 263,864, or 81 percent, of these deaths were directly attributable to the incident. In the United States One in every four Medicare patients who were hospitalized from 2000 to 2002 and experienced a patient-safety incident died. These incidents also had notable effects on the financial situation of
patients, which accounted for $8.54 billion in excess in-patient costs to the Medicare system over the three years studied. Extrapolated to the entire U.S., an extra $19 billion was spent and more than 575,000 preventable deaths occurred from 2000 to 2002.

The United States is known for having extremely high standards in the field of health care. There are many reasons for this, including extensive technological and other resources, but part of the explanation may well lie in the fact that there exist legal channels in the United States through which patients who have been harmed by their physicians can demand that those physicians be held accountable. An argument can certainly be made that, without these legal mechanisms to ensure that there are serious consequences for physician misconduct, some physicians would be less likely to use the great care in practicing their profession that they must use under the current system to avoid these consequences. Thus, advocates of patients' rights often claim that proposed tort reform measures that would set relatively low "caps" on the non-economic damages that physicians could be required to pay would lower the standards of medical care in the United States by removing a deterrent against negligence. Not only would seriously injured patients who have lost their vision, been paralyzed, etc. be stripped of the right to obtain meaningful compensation for their suffering, but society on a larger scale could be harmed by lower standards of care in general.

Nonetheless, despite the legal protections that are currently in place, patients sometimes must surmount very difficult obstacles in order to even discover exactly who is responsible for an injury they sustained while in a hospital or under a physician's care, much less hold anyone accountable. Investigations into alleged physician misconduct are often sealed and can only be exposed by filing a lawsuit and obtaining subpoenas to force
medical staff to testify in court. Thus, accusations that the plaintiffs in medical
malpractice cases are motivated primarily by the large monetary payments that some
juries award are to some extent misguided. In many cases, plaintiffs counter that their
goal has at least as much to do with simply uncovering the facts behind their injuries than
obtaining any monetary compensation. Furthermore, court costs and expenses related to
obtaining subpoenas, hiring expert witnesses, etc. are generally quite high and therefore
discourage attorneys from agreeing to argue frivolous, weak cases that they are unlikely
to win.

Compromises that can be made would be to have more educated juries or judges
presiding over medical malpractice cases. This would more likely favor the doctors and
medical staff, but does minimize frivolous cases, and does not take time away from
substantial cases. The bell curve also comes into play where substantial cases need to
take priority. There are a small number of grossly incompetent physicians whose actions
lead to a disproportionately large number of malpractice cases. Simply weeding out these
few "bad apples" could reduce the burden on the legal system and insurance agency and
serve the common good better than imposing arbitrary "caps".

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