Medical Malpractice

“BAD DOCTORS”

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The nature of the “crisis”

- US not in a medical malpractice litigation “crisis”

- US in a medical malpractice “crisis”

- Physicians must bear some of the responsibility
  - Failing to evaluate the data regarding medical malpractice lawsuits to properly frame the discussion
  - Desultory efforts toward patient safety and quality
  - Inadequately policing the profession of medicine
Medical Liability System

Three primary functions:
- Compensate negligently injured patients
- Deter physicians from providing substandard care
- Corrective justice

Tort law - Negligence
- Duty
- Breach
- Causation
- Harm
Civil Litigation

- Imperfect
  - Expensive
  - Prolonged
  - Restricted information
  - No quality feedback to providers
  - Focus on individual errors as opposed to systems
  - Results in defensive medicine

Civil litigation not imperfect because of plaintiff’s attorneys
MD theory of “crisis”

- Lawsuits driven by unscrupulous plaintiff’s attorneys using legal system pitted against physicians

- Medical malpractice insurance
  - “unavailable”
  - “prohibitively expensive”

- Consequences
  - Physicians leave practice
  - Stop performing high risk procedures
  - Aversion to high-risk specialties
Too many lawsuits?

California Medical Association (1974)¹

- 21,000 medical records reviewed to identify iatrogenic injuries of hospitalized patients
- 4.65% suffered injury, 0.79% would result in negligence verdict by jury
- 10% of negligently injured patients filed a malpractice claim; 40% resulted in plaintiff recovery
- 4% chance of compensating patient for physician error leading to injury²

Too many lawsuits?

- Harvard Medical Practice Study (1991)
  - 30,000 patient records and 67,000 litigation records in New York
  - 3.7% of New Yorkers had adverse events
  - 1% of adverse events the result of negligence
  - 4% of negligent injuries filed as malpractice claims

Frivolous claims?

- Most claims actually have some basis
- Harvard Study\(^1\)
  - 1452 medical malpractice claims examined
  - 97% of claims involved injury
  - 63% of claims with injury involved error by reviewer
  - 73% of claims with error compensated
- Conclusion- “The system performs reasonably well”

\(^1\)Brennan TA, et al., Claims, Errors and Compensation Payments in Medical Malpractice Litigation, NEJM 2006;354[19]:2024-33
“Lottery-like” Payments?

Payments (judgments and settlements) grew 52% from 1991 to 2003

“Lottery-like” Payments?

Payments as a function of national health care spending have not risen significantly

Greedy plaintiff’s lawyers?

- Contingency compensation system
  - Plaintiff attorney receives nothing if no recovery
  - Must fund litigation costs

- Strong incentive to screen cases

- No incentive to file suits without a basis
The Underwriting Cycle

- Responsible for rapid cost increases and lack of availability of medical malpractice insurance

- Medical malpractice premiums rise and fall with the state of the economy

- Third “crisis” in the last 40 years

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Failure #1: Where physician attention has been focused

- Failing to independently and objectively evaluate the data regarding medical malpractice
- Inaccurately placing blame on plaintiff’s attorneys and their clients
Failure #2:
Where physician attention has not been focused

- Physicians have failed to make medicine as free from preventable medical error as possible

- Any preventable error leading to a determination of negligence contributes to a medical malpractice “crisis”
To Err Is Human

“freedom from accidental injury due to medical care, or medical errors.”

44,000-98,000 die from preventable medical errors each year

Loss of trust and diminished satisfaction

Kohn LT, Corrigan JM, Donaldson MS, editors. To Err is Human: Building a Safer Health System. Washington, DC; 2000
To Err Is Human- Strategies

- Establishing a national focus on safety
- Developing nationwide public mandatory/voluntary reporting systems
- Raising performance standards and expectations for improvements in safety
- Implementing safety systems
HealthGrades Quality Study

“there is little evidence that patient safety has improved in the last five years.”

- 37 million patient records or 45% of all hospital admissions
- 1.14 million patient safety incidents from 2000-2002
- 263,864 deaths (81%) potentially attributable to patient safety incidents
- Concedes that measurement of quality is difficult and impedes progress

NHRQ Report
Hospital care measures improving faster than outpatient care

Acute > preventive/chronic
“Bad Doctors”

- In May, 2006 a Florida hand surgeon operated on the wrong hand at an outpatient surgery center...

- For the third time in six years.

- Penalty: 2 year probationary period and a $20,000 fine.
The majority of medical errors are not “bad apple” problem- faulty systems

But repetitive individual failures occur

- 5.9% of physicians responsible for 57.8% of medical malpractice payments
- 82% of physicians have not made one malpractice payment

Physician Discipline

No correlation between punishment received through medical malpractice system and future deviations from “standard of care”

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Summary

- Physicians have failed to evaluate medical malpractice litigation and payment data

- Insufficient physician effort to make the practice of medicine as free from preventable error as possible

- Inadequate policing of the profession of medicine by physicians
Conclusion

- We are not all “bad doctors”
- We bear some of the responsibility for the medical malpractice crisis
- We can become better doctors by challenging some of our convenient beliefs
- Focus efforts on patient safety
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COMING SOON
MATERNITY CLINIC

COMING SOON AFTER
LAW FIRM DEALING
IN MEDICAL MALPRACTICE

Ron Morgan