



JOINT ECONOMIC COMMITTEE

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The Perverse Nature of the Medical Liability System

It is commonly assumed that the medical liability system works as advertised: injured patients sue negligent doctors for compensation for their injuries. This assumption is the basis for arguments defending the current system. However, medical liability in practice differs greatly from theory because the system is ineffective at deterring negligent injuries and fails to justly compensate those truly harmed by negligent injuries, thereby providing compelling grounds for serious medical liability reform.

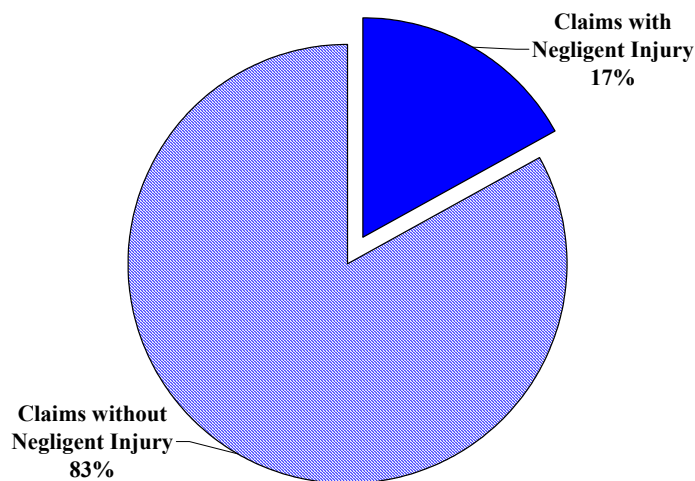
HITTING THE WRONG TARGET

Unfortunately, the medical liability system malfunctions on a fundamental level. Analyses of hospitalizations and medical liability claims reveal that close to 80 percent of medical liability claims are not associated with an injury caused by negligence. One study estimated that just 17 percent of medical liability claims involved a negligent injury. Another study put the figure at 15 percent. In other words, only about one in five medical liability claims actually involve negligence. In fact, more than half of all medical liability claims do not involve an injury at all.

At the same time, the vast majority of negligent medical injuries never materialize as liability claims. According to different studies, only about 3 percent of victims of medical malpractice actually file liability claims. The obvious implication from this fact is that the liability system fails to punish the vast majority of negligent medical injuries. While many of the negligent injuries that do not result in a claim are relatively minor, a significant number of non-litigated negligent injuries involve major disability.

The system is not completely dysfunctional, in the sense that negligent doctors are probably more likely to get sued than are non-negligent doctors. Yet the fact remains that the large majority of doctors who are sued for medical liability are not guilty of negligent care. One way to

Figure 1. Negligent Injuries in Medical Liability Claims



Source: Harvard Medical Practice Study.

summarize the effects of the current system is to say that some bad doctors get sued, but not everyone who is sued is a bad doctor.

Thus, the medical liability system largely penalizes doctors who have done nothing wrong, while at the same time fails to provide compensation to the vast majority of legitimate victims. Put another way, the bulk of the medical liability system is preoccupied with penalizing non-negligent doctors on behalf of claimants who lack a sound legal basis for their claims. As one critic has observed, “it is similar to a situation in which a traffic officer is giving tickets to large numbers of motorists who are not speeding, but failing to give tickets to many speeding motorists.”

THE COST OF BEING SUED

Defenders of the current system sometime argue that since doctors usually prevail in medical liability trials, they suffer no adverse consequences if the system erroneously targets them. This argument is demonstrably false. For example, claims data show that even cases that are dropped or dismissed generate legal bills for the defendant that average nearly \$17,000 and legal defense costs in medical liability trials are virtually identically for guilty and non-guilty verdicts.

More importantly, merely being sued entails substantial costs aside from any payment to claimants. Doctors must devote a significant amount of time to the claim, such as meeting with lawyers, giving depositions, and time in court. Whereas payments to claimants are generally paid for by their insurance coverage, this time cost imposes direct financial losses due to time

away from their practice. Similarly, even if doctors are exonerated in liability claims, they still can suffer damage to their reputation which bears financial consequences as well. Lastly, the act of being sued causes significant psychological stress, a non-financial cost that can never be reimbursed. Even if they have done nothing wrong, these costs constitute a substantial penalty for doctors who are sued.

CONCLUSION

In practice, the medical liability system departs dramatically from its two central goals of punishing negligent doctors (i.e., deterrence) and compensating patients with negligently-caused injuries. Given the facts noted above, two conclusions are apparent. First, the existing medical liability system is hamstrung in providing an effective deterrent to negligent injuries for the simple reasons that most negligent acts go unpunished and most doctors who are sued are not guilty of negligence. In the effort to punish the 3 percent of negligent injuries that actually result in a liability claim, the system ends up penalizing four innocent doctors for every one that is negligent. Second, the medical liability system fails to meet its goal of compensating the negligently injured because the vast majority of negligently-injured patients do not file a liability claim. If victims of negligence do not file liability claims, then the liability system cannot compensate them for their losses. In sum, the observable facts of the current medical liability system demonstrate that in practice, the system is both inefficient and ineffective at meeting its goals.

This Research Report is based in part on the Joint Economic Committee study *Liability for Medical Malpractice: Issues and Evidence* (May 2003). For a copy of this study, contact the JEC at (202) 226-3234 or visit the website www.house.gov/jec.