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The Effect of Medical Malpractice

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I. INTRODUCTION: WHAT IS MEDICAL MALPRACTICE

“Every year, medical malpractice is a serious problem for thousands of people across the country.”¹ Medical malpractice claims arise when a healthcare professional fails to provide a patient the standard quality of care, thus resulting in an injury or harm to the patient.² Medical malpractice can take place in any and every healthcare facility by any type of medical personnel, including internists, surgeons, nurses, and support staff.³

As a leading personal injury firm in Chicago, Power Rogers & Smith explains:

When we go to a doctor or a hospital, we hope that we will receive the best possible care at the hands of the medical profession. Unfortunately, that is not always the case. Many people are gravely injured or even die as a result of these mistakes. Healthcare providers, including doctors, chiropractors, dentists, nurses, and hospitals need to be held accountable for the pain and suffering that they create after performing negligence.⁴

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¹ Amy Nutt, *Negative Effects of Medical Malpractice*, EZINE ARTICLES, May 7, 2009, <http://ezinearticles.com/?Negative-Effects-of-Medical-Malpractice&id=2317877>.

² *Id.*

³ *Id.*

⁴ Power Rogers & Smith, *Chicago Medical Malpractice Law*, <http://prslaw.com/whatWeDo/Chicago-Medical-Malpractice-Law/> (last visited Feb. 21, 2010).

Moreover, an article published in the *Journal of the American Medical Association* noted that every year in the United States almost 12,000 patient deaths occur due to unnecessary surgery, 7,000 deaths were caused by medication errors in hospitals, and 20,000 deaths resulted from other errors in hospitals.⁵ The *Journal of the American Association for Justice* stated that a decade ago as many as 98,000 people died every year from preventable medical errors, costing the nation an estimated \$29 billion dollars.⁶

Medical malpractice can negatively affect all aspects of an injured patient's life, from physical and emotional damages to serious financial hardships. Results such as loss of work, permanent disability, loss of quality of life, and loss of future wages are a few examples of the possible negative impacts.⁷ Furthermore, when death is the result of medical negligence, "the surviving dependents or beneficiaries may be entitled to monetary damages in order to help pay for medical costs and other expenses incurred by the family of the victim."⁸

Medical malpractice is not an easy subject to address, as the impact seems to cover almost all spectrums of the economy. Medical malpractice affects both patients and physicians severely. Thus, it is crucial to examine the effects of medical malpractice claims against physicians. This article aims at examining the impact that medical malpractice claims have on physicians and quality of care.

⁵ Nutt, *supra* note 1.

⁶ Am. Ass'n for Justice, Preventable Medical Errors – The Sixth Biggest Killer in America, <http://www.justice.org/cps/rde/xchg/justice/hs.xsl/8677.htm> (last visited Feb. 21, 2010).

⁷ Nutt, *supra* note 1.

⁸ *Id.*

II. THE EFFECT OF MEDICAL MALPRACTICE ON PHYSICIANS

The litigious nature of American society is influencing the field of medicine. An overwhelming majority of practicing physicians believe that their concerns regarding medical malpractice liability impair their ability to provide quality care, cause them to order unnecessary tests, and make unnecessary referrals. This belief is shared by many nurses and hospital administrators. Furthermore, a large majority of physicians, nurses, and hospital administrators believe that these extra tests, referrals, and procedures significantly contribute to healthcare costs.⁹ There have been numerous studies conducted to examine these beliefs, and the results are striking.

For instance, Harris Interactive for Common Good, a newly formed bipartisan coalition, conducted a nationwide survey in March 2002.¹⁰ This survey included interviews from 300 physicians, 100 hospital-based nurses, and 100 hospital administrators.¹¹ Overall, the survey revealed that a large number of physicians have a fear of malpractice liability that causes them to provide unnecessary care.¹² Specifically, 79% of physicians said they ordered unnecessary tests, and 74% said they made unnecessary referrals.¹³

Additionally, about 54% of physicians knew other doctors who were reluctant to help an injured person while off-duty because of a fear of liability.¹⁴ Of those 54%, 34% of those physicians knew of a specific situation where a

⁹ See HARRISINTERACTIVE, COMMON GOOD FEAR OF LITIGATION STUDY: THE IMPACT ON MEDICINE 8-9 (2002).

¹⁰ *Id.* at 6.

¹¹ *Id.*

¹² *Id.* at 8.

¹³ *Id.*

¹⁴ *Id.* at 18.

doctor did not volunteer to help.¹⁵ Moreover, 76% of physicians reported that their concerns about malpractice litigation hurt their own ability to provide quality patient care.¹⁶ A majority of physicians, hospital administrators, and nurses believe that unnecessary or excessive care was sometimes provided because of the fear of medical liability, and many believe this happened "very often."¹⁷

Other alarming statistics found from the Harris study include the fact that half of all physicians believe that their ability to provide quality medical care to patients has substantially decreased in the past five years.¹⁸ More than three-fourths of physicians believe that the concern about malpractice has harmed their ability to provide quality care in recent years.¹⁹ Also, nearly one-third of physicians reported that they were selective of specialties based upon a fear of higher legal exposure.²⁰ Finally, the survey uncovered the belief that the extra tests, referrals, and procedures resulting from the fear of liability contributed in a significant way to healthcare costs.²¹

The statistical information from the Harris Interactive for Common Good study contains an over-arching theme: healthcare providers are fearful of lawsuits being brought against them.²² Some researchers suggest that the fear of malpractice does not improve medical care; rather, it forces doctors to take a more defensive approach in treating patients by providing unnecessary or excessive

¹⁵ *Id.*.

¹⁶ *Id.* at 23.

¹⁷ *Id.*

¹⁸ *Id.* at 8.

¹⁹ *Id.*

²⁰ *Id.*

²¹ *Id.* at 21.

²² *Id.* at 8.

care.²³ Such unnecessary or excessive care given by physicians may include: ordering more tests than necessary; increasing referrals of patients to specialists; suggesting invasive procedures, such as biopsies, to confirm diagnoses more often than what is medically needed; and prescribing more medications, such as antibiotics.²⁴ Conducting additional tests and taking otherwise unnecessary measures help to establish a solid record of care may be good for defending a malpractice case, but are significant factors in making healthcare more time-consuming and expensive.²⁵

Legal action can result in other costs, including mental distress, lost time from work, and a damaged reputation.²⁶ Medical malpractice lawsuits can impose more than just a financial burden upon physicians. There is significant research showing that coping with a medical malpractice suit can weigh heavily on a physician. No one wishes an ill outcome on a patient,²⁷ and physicians are especially challenged when there is an unexpected outcome, such as an unanticipated death, followed by a charge of malpractice.²⁸ In this situation, a physician may feel overwhelmed and out of control.²⁹ Often physicians take the accusation of malpractice personally,³⁰ and some are prone to symptoms of

²³ *Id.*; Am. Bar Ass'n, *What Is Medical Malpractice?*, ABA FAMILY LEGAL GUIDE, 2004, <http://public.findlaw.com/abafg/flg-17-3b-1.html>.

²⁴ HARRISINTERACTIVE, *supra* note 9, at 19.

²⁵ Am. Bar Ass'n, *supra* note 23.

²⁶ CONG. BUDGET OFFICE, MEDICAL MALPRACTICE TORT LIMITS AND HEALTHCARE SPENDING 1 (2006) [hereinafter CBO].

²⁷ *Id.*

²⁸ Sara C. Charles, *Coping with a Medical Malpractice Suit*, 174 WEST J. MED. 55, 55-58 (2001).

²⁹ *Id.*

³⁰ *Id.* at 56.

depression, adjustment disorder, the onset of a physical illness, alcoholism, or drug misuse.³¹

III. MEDICAL MALPRACTICE INSURANCE PREMIUMS

Nearly all health care providers, such as physicians and hospitals, purchase insurance that covers expenses related to medical malpractice claims including payments to claimants and legal expenses. The most common physician policies provide \$1 million of coverage per incident and \$3 million of coverage per year.³² Today the primary sellers of physician medical malpractice insurance are the physician-owned and/or operated insurance companies that, according to the Physician Insurers Association of America, insure approximately 60% of all physicians in private practice in the United States.³³

Medical malpractice insurance premiums have a great impact on a physician's career. With increasing malpractice premiums, physicians may make alterations in their practices.³⁴ For instance, physicians may relocate because some geographic areas have increased premiums for certain specialties.³⁵ These areas may see a decrease in that type of specialty in the long run because young physicians are dissuaded from practicing in that market area.³⁶ For many of these physicians, they do not look at the increase in malpractice insurance as a lack of

³¹ *Id.* at 55.

³² U.S. GEN. ACCOUNTING OFFICE, MEDICAL MALPRACTICE INSURANCE: MULTIPLE FACTORS HAVE CONTRIBUTED TO INCREASED PREMIUM RATES 6 (2003).

³³ *Id.*

³⁴ FRANK A. SLOAN & LINDSEY M. CHEPKE, MEDICAL MALPRACTICE 56 (2008).

³⁵ *Id.*

³⁶ *Id.*

income, but instead, identify it as a probability of personal liability.³⁷

Former president George W. Bush attributed the high cost of personal health services throughout the United States to extensive litigation and the high cost of medical malpractice insurance.³⁸ Moreover, a recent study showed that in Florida, and increasingly around the country, many physicians are choosing to retire early or to practice in specific specialties because of the rising cost of medical malpractice insurance.³⁹ The Executive Summary of the report of the Governor's Select Task Force on Healthcare Professional Liability Insurance from Florida states that "[t]he concern over litigation and the cost and lack of medical malpractice insurance have caused doctors to discontinue high-risk procedures, turn away high-risk patients, close practices, and move out of state. In some communities, doctors have ceased delivering babies and discontinued hospital care."⁴⁰ Because of the effect of medical malpractice on physicians, something must be done to find a solution.

IV. SOLUTIONS TO MEDICAL MALPRACTICE

There are potential solutions to minimize the effects of medical malpractice lawsuits. The Congressional Budget Office previously considered the effects of limits on tort claims for medical malpractice at the state level.⁴¹ The Congressional Budget Office concluded that limits on claims reduced both malpractice awards and malpractice insurance premiums.⁴² The study predicted

³⁷ *Id.* at 57.

³⁸ *Id.*

³⁹ *Id.*

⁴⁰ *Id.*

⁴¹ CBO, *supra* note 26.

⁴² *Id.*

that the lower malpractice premiums would reduce providers' costs.⁴³ However, the study realized that the analysis was inconsistent and dependent upon the particular relationships and specifications tested.⁴⁴

Recently, there has been debate that some sort of tort reform or cap on medical malpractice damages would decrease overall healthcare costs. In an effort to control the rising costs of medical malpractice insurance, there has been a recent effort to impose limitations on medical malpractice lawsuits.⁴⁵ Many states have implemented restrictions on tort claims for medical malpractice, and Congress has considered various proposals to establish nationwide limits similar to those already imposed by many states.⁴⁶ The American Medical Association and medical malpractice insurers say that a limit on damages awarded for pain and suffering in medical malpractice lawsuits will benefit doctors, insurers, and patients throughout the country.⁴⁷ The belief is that by controlling the costs of these lawsuits, the cost of medical malpractice insurance is likely to decrease both for the physicians and insurance companies.⁴⁸ In former President Bush's support of placing caps on lawsuits, he believed that:

If one of the goals of a good healthcare system is for it to be affordable and accessible, and if lawsuits are running up the cost of medicine and/or driving docs out of business because the practicing of medicine is too expensive, we've got to do something about it.⁴⁹

While this may be true, the impact of putting caps on pain and suffering are not seen overnight. The impact of a cap can take years to have an effect on

⁴³ *Id.*

⁴⁴ *Id.*

⁴⁵ Joseph B. Treaster, *Malpractice Insurance: No Clear or Easy Answers*, N.Y. TIMES, Mar. 5, 2003, at C.

⁴⁶ CBO, *supra* note 26.

⁴⁷ Treaster, *supra* note 45.

⁴⁸ *Id.*

⁴⁹ *Id.*

physicians and patients.⁵⁰ Caps can only do so much for the overall impact on medical costs; however, there must also be a drop in medical malpractice premiums.⁵¹

V. CONCLUSION

Physicians believe that medical malpractice premiums have increased exponentially during the last decade, which has resulted in a decreased pool of qualified physicians available to consumers seeking quality care. A number of older physicians are feeling forced out of practice as a result of rising medical malpractice premiums. Some physicians find themselves torn between providing their patients with quality care while feeling unable to do so because of exorbitant premiums. Thus, patients are left with fewer and fewer options when seeking out quality medical care. As discussed above, in some areas, patients are left with no convenient options. In addition, physicians are faced with the belief that they must stop providing certain services to patients. Even when physicians do provide patients with services, many times they provide additional unnecessary tests because of their fear of litigation.

It is clear that the practice of medicine and delivery of medical care by all healthcare providers is significantly influenced by the fear of malpractice claims.⁵² Physicians believe that with the adverse consequences, including financial liability and the fear of litigation, there is a need for change in order to allow for better, more efficient healthcare in the future. If no changes are made,

⁵⁰ *Id.*

⁵¹ *Id.*

⁵² HARRISINTERACTIVE, *supra* note 9, at 11.

physicians will continue to leave the practice of medicine and leave certain areas of this country underrepresented by certain medical specialties.