

Do Lawsuits Make Medical Care Safer?

By Ellen B. Flynn

The civil justice system seeks to compensate injured plaintiffs and deter future wrongdoing. But do lawsuits improve medical care? Mounting evidence confirms that they do.

Alarming Statistics

Over a decade ago, the Institute of Medicine (“IOM”) estimated that preventable medical errors annually cost the American economy between \$17 Billion and \$29 Billion in lost income and household production, disability, and medical expenses¹ The IOM further estimated that as many as 98,000 Americans died each year from preventable medical errors in the nation’s hospitals.

In 2010, the Office of the Inspector General of the U.S. Department of Health and Human Services revisited those statistics, finding that 180,000 Medicare patients died from preventable medical errors.²

More recent studies suggest that preventable medical errors cause between 235,000 and 400,000 deaths each year.³ These statistics would make malpractice the third-leading cause of death in America, behind heart disease and cancer, as Peter J. Pronovost, M.D., Ph.D., a Professor at Johns Hopkins’ Department of Health Policy and Development, recently confirmed:

“Medical harm is probably one of the three leading causes of death in the U.S., but the government doesn’t adequately track it as it does deaths from automobiles, plane crashes, and cancer. It’s appalling.”⁴

¹ Inst. Of Med., *To Err is Human: Building a Safer Health System*, 26 (Kohn ed. Nov, 1999), available at www.nap.edu/books/0309068371/html.

² Office of the Inspector Gen., U.S. Dep’t of Health and Human Servs., “Adverse Events in Hospitals: National Incidence Among Medicare Beneficiaries,” at ii (2010).

³ John T. James, Ph.D., “A New, Evidence-based Estimate of Patient Harms Associated with Hospital Care,” *J. Patient Safety*, 9(3): 122-28 (Sept. 2013).

⁴ *Consumer Reports Magazine*, *How Safe is Your Hospital? Our new Ratings Find that Some Are Riskier than Others* (Aug. 2012).



Despite this staggering death toll, some legislators and members of the public embrace the rhetoric of medical malpractice tort reform which maintains that frivolous lawsuits have created a crisis in health care, forcing innocent doctors into retirement and driving up medical costs for everyone else. But such rhetoric does not withstand close scrutiny.

A statistical study of claims, medical errors and compensation payments, performed under grants from the Agency of Healthcare Research and Quality and the Harvard Risk Management Foundation, and published in the *New England Journal of Medicine*, concluded that “portraits of a malpractice system that is stricken with frivolous litigation are overblown.”⁵ The study further concluded that “the malpractice system performs reasonably well in its function of separating claims without merit from those with merit and compensating the latter.” In fact, the study’s authors discovered that meritless claims resulting in the payment of compensation were relatively uncommon, while meritorious claims resulting in no compensation to the victims were substantially more numerous. Taken together with the vast number of negligently-caused medical injuries that were not pursued at all, this study is further evidence that medical malpractice suits are not crippling the nation’s health care system.

⁵ David M. Studdert, LLB, ScD, MPH, *et al.*, “Claims, Errors, and Compensation Payments in Medical Malpractice Litigation,” *N Engl. J. Med.* 2006; 354: 2024-2033 (May 11, 2006).