



The Hidden Costs of Medical Liability



The malpractice debate continues, like a rerun of *Quincy, M.E.*—you know the ending, but pretend to be surprised, if only to justify why you would watch the same show twice (or, in this case, many more).

The issue of medical liability, while it has received little attention in the health reform debate, is perhaps the best example of why changing healthcare, no matter where you want it to go, is so difficult to achieve. Indeed, the medical liability debate will forever be just that: a debate, with no end, with watered down reforms at best. We will never address the core issues because they are simply “too hot to handle.” Much like healthcare reform, everybody wants it, and a majority agree on what is broken, but no one can agree on how to fix it.

Here’s why: On complex issues, humans have a natural tendency to polarize into camps based on perceived moral superiority. This protects them from the insecurity of uncertainty and compromise. Compromise sounds weak, and why should I have to compromise on something when I know I am “right?”

We seek moral comfort on issues; we want black and white, right or wrong. We run away from anything with a touch of grey. The consequence of our morality dilemma is polarization and indecision. We huddle into camps with the like-minded. We demonize the disbelievers as immoral or insensitive.

On one side of the medical liability issue, you have those who highlight how the fear of liability destroys the very fabric of the doctor-patient relationship. Every decision is made with the fear of liability looming. This, we argue, results in unnecessary tests, increased costs, and more time spent away from patients while we document everything we can to protect ourselves.

On the other side are those who fear that without penalties for “negligence,” patient safety will suffer, and evil, no-good doctors will leave patients on operating tables to get in a round of golf.

Now, at the risk of oversimplifying, it is true that patients have suffered significant, life-altering harm from preventable medical errors, many that seem grossly negligent in hindsight. I am often befuddled by how my colleagues’ care can at times seem so substandard, so sloppy, and often filled with arrogance. But I am also very cognizant of the immense pressure we work under: the productivity demands, and a payment system that is not only unjust, but breeds poor care. Not to mention the most complex, un-

predictable, and rapidly evolving discipline in the world. No one can be the infallible master of all this.

Now, mistakes are made in every profession, every day. What makes medicine different are the consequences. Life hangs in the balance with every decision. We accepted that when we entered this profession. But punitive liability does nothing to mitigate the very mistakes it is intending to prevent.

Here’s why: When liability hangs over every decision, you simply create an environment of fear. And this has its greatest impact on the most caring, thoughtful, and astute in our profession. The fear of liability significantly changes the practices of the “good,” distracting them from their most critical mission, diluting their potential impact on patient care. All the while, the truly negligent, the arrogant, and the uncaring, are, by nature, oblivious to it all.

Someone forgot to examine the basic human psychology of a punitive system of liability in a profession littered with uncontrollable land mines. Gross, malicious negligence, of the kind malpractice law should punish, is committed by a tiny minority who often consider themselves untouchable anyway. Fear of liability doesn’t faze them.

Many of those opposed to tort reform will argue that a small minority of cases go to trial, and an even smaller minority of jury verdicts favor the plaintiff. They will argue that the system is, therefore, pretty accurate at identifying gross negligence. What they fail to address are the thousands of cases that don’t go to trial, but inflict an incurable harm on those who have had to endure and the fear they have instilled in all of us. You cannot assign a dollar cost to the impact of fear, but I can assure you it has eroded the quality of care our patients receive and the quality of life our physicians deserve. ■

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