

MEDICAL MALPRACTICE REFORM

The Patients' Primer

AAPS supports tort reform measures, but any long-term solution must address causes.

- ✓ Patients are disenfranchised by third-party payment of most medical bills. They feel entitled to everything that can be done, having paid for it in advance and having no prospect of benefit from forgoing “defensive medicine.” Patients need to share the responsibility for medical decisions.
- ✓ “Malpractice” insurance is itself part of the problem. It creates a deep pocket for supporting the plaintiff’s and the defense bar and for indemnifying patients who had a bad outcome.
- ✓ Hospital requirements that physicians carry “malpractice” insurance, especially insurance with very high policy limits, as a condition for medical staff privileges makes the pocket deeper and thus encourages more litigation.

Innovative solutions include:

- ◆ **ALTERNATIVE DISPUTE RESOLUTION** Legal changes that permit contractual solutions to the problem, such as agreements with patients to use alternative dispute resolution, resorting to courts only for gross negligence or malfeasance with a high standard of proof, and an agreement to pay defense attorney’s fees in the event of violating the contract.
- ◆ **FIRST PARTY INSURANCE** New insurance products for first-party, as opposed to third-party coverage for bad outcomes. Patients would pay the premiums and receive any benefits. This would be analogous to buying traveler’s insurance prior to boarding an aircraft. Patients would thus pay premiums directly rather than indirectly through inflated medical bills or medical insurance premiums. They would get more value for the dollar because the benefit would not be shared with lawyers.

Patients could receive benefits even when their misery did not result from any error on the part of their doctor. Insurers would have incentives to find methods that decreased medical error rates while helping to price risk. For example, premiums could be lower if the patient chose a physician who participated in a voluntary, nonpunitive program to track errors and “near misses.”

- ◆ **HOSPITAL REQUIREMENTS.** Reduction of high policy limits required by hospitals as a condition of extending privileges. Physicians could choose product with more affordable premiums. Further, hospitals could completely eliminate requirements for malpractice coverage. Physicians could choose to go “bare” and minimize liability exposure.
- ◆ **INSTALLMENT AWARDS.** Most state require judgments to be paid as a lump sum. This is could be modified to allow for installments funded by an annuity.
- ◆ **CHARITY IMMUNITY.** Physicians who provide uncompensated care should be given immunity from liability.
- ◆ **NO DOUBLE DIPPING.** Receiving compensation from multiple sources for the same damages should be prohibited.
- ◆ **PATIENT EDUCATION.** Increased access by patients to low-cost, individualized expert opinions, as through the Internet, to improve their ability to participate intelligently in making their medical choices. This probably requires changes in state licensing laws to permit telemedicine.

We need to put patients back in the financial equation, and remove lawyers from it. We need to emphasize individual responsibility and move away from shifting responsibility onto third parties. Legislation should make it possible for doctors and patients to elect to try such a new system. We expect that increased satisfaction and lower medical costs would be experienced by all.

ADDITIONAL RESOURCES

AMA <http://www.ama-assn.org/ama/pub/category/7259.html>
American Tort Reform Foundation <http://www.atrafoundation.org/>



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