PATIENT SAFETY BLOG

PATRICK MALONE & ASSOCIATES, P.C.

Toll Free: 888.625.6635 (888.MaloneLaw) Local: 202.742.1500



Defensive Medicine: Does It Really Exist?

Posted On: July 6, 2010 by Patrick A. Malone

A new survey in a <u>medical journal</u> says the overwhelming majority of doctors believe that defensive medicine is costing the nation billions of dollars a year and they need protection from malpractice lawsuits. But does it really add up?

There is no question that U.S. patients undergo many more tests and procedures than any other country, and that we don't show anything good for it in our health statistics compared to other countries with much more inexpensive care.

Doctors typically say their peers order unnecessary tests because the patient will sue them if they don't.

Patrick A. Malone Patrick Malone & Associates, P.C. 1331 H Street N.W. Suite 902 Washington, DC 20005 pmalone@patrickmalonelaw.com www.patrickmalonelaw.com 202-742-1500 202-742-1515 (fax) This has always struck me as a strange admission.

To get paid, doctors have to attest to the necessity of any test they order, so when they order these

so-called defensive tests purely to protect themselves, they commit insurance fraud.

Of course, if there's any chance the test may help the patient by revealing a treatable problem, then

the test was necessary and doesn't fall into the category of insurance fraud or defensive medicine.

Yet many doctors seem to think it's only the extra threat of being sued for not ordering the test that

pushes them over the line to ordering it.

The Wall Street Journal's Katherine Hobson wrote up the new survey on her health blog, which

appeared in Archives of Internal Medicine, and drew some interesting comments from readers. One

patient told his own story:

* Gerald wrote:

I have read comments here with interest. I have had a doctor tell me he was

ordering a test on me more out of a fear of being sued, and that it "was probably

not necessary." I was shocked. I said, "Doc, you are telling me that if I have a

brain tumor, and die, that is not a serious enough risk for me to have an MRI,

UNLESS YOU COULD BE SUED FOR IT!" I had some severe headaches.

The doctor turned red with embarrassment, and perhaps shame. He apologized

and said he did not realize what he was saying. He could only be sued if turned

out to have a serious medical problem that could have been prevented by the

test. He was admitting that my life was not enough motivation for the test, but if

he could be sued for the lost of my life; then it was good motivation for the test.

Patrick A. Malone Patrick Malone & Associates, P.C. 1331 H Street N.W. Suite 902

Washington, DC 20005

pmalone@patrickmalonelaw.com www.patrickmalonelaw.com 202-742-1500 202-742-1515 (fax) The survey was not scientifically rigorous. As reported by the WSJ:

Researchers say that 91% of the 1,231 doctors who responded to their survey "reported believing that physicians order more tests and procedures than needed to protect themselves from malpractice suits."

The "belief" by a survey respondent that some doctors order tests only to protect themselves is a far cry from admitting that one personally does this.

Another commenter, who identified himself on the WSJ blog as Rod Tucker Esq., wrote:

Every survey such as this one should require that the doctors give their names and specific examples of the tests they had done which they did not feel were necessary. Then their patients could ask why they were forced to undergo these often harmful and usually painful tests and why they were forced to pay for unnecessary acts by the doctor. The insurance company could also refuse to pay because the test was by definition unnecessary.

No person in business (doctors get paid for their work and are by definition in business) has the right to demand that they get to mess up and not be responsible to the innocent person they hurt. So instead of trying to give doctors a free pass how about we treat them like everyone else and ask the cost of a test and decide for ourselves if it is necessary, just like we do when we buy anything else.

People interested in learning more about our firm's legal services, including medical malpractice in Washington, D.C., Maryland and Virginia, may ask questions or send us information about a particular case by phone or email. There is no charge for contacting us regarding your inquiry. A malpractice attorney will respond within 24 hours.

All contents copyrighted 2010 <u>Patrick Malone & Associates</u> except where copyright held by others. Reproduction in any form prohibited except where expressly granted.

Patrick A. Malone
Patrick Malone & Associates, P.C.
1331 H Street N.W.
Suite 902
Washington, DC 20005

pmalone@patrickmalonelaw.com www.patrickmalonelaw.com 202-742-1500 202-742-1515 (fax)