

NEW MEXICO INJURY ATTORNEY BLOG

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The Myth of the Frivolous Medical Malpractice Lawsuit

A report by Public Citizen debunks the myth of frivolous medical malpractice claims. In fact, the report indicates that medical malpractice payments are at record lows.

The report provides some interesting statistics that the tort reform movement neglects to mention in their constant ranting about trial lawyers preying on the medical community. The report states that there are a least 3 deaths caused by medical errors for every single medical malpractice payment of any kind.

These statistics make clear that medical malpractice awards are actually rare, and perhaps more rare than can be justified by public safety. Public Citizen reviewed the National Practitioner Data Bank which has been tracking this data since 1990. The group found that there were only 11,037 payments in 2008 nationally. This number was right at 31% lower than the average number of payments in all previous years.

These numbers reflect 13.5 medical malpractice payments per million physicians in 2006 which apparently is the last available data for the number of practicing physicians U.S. The costs of medical malpractice, including insurance premiums, is one fifth of one percent of all health care costs.

In fact, if anything, there are far fewer lawsuits than are justified by actual medical negligence. The Public Citizen report cites a 1999 study entitled "To Err Is Human" from the Institute of Medicine's (IOM). The IOM study found that between 44,000 and 98,000 Americans die each year due to avoidable medical errors. In 1999, fewer than 15,000 people total, including non-fatal incidents, received any compensation at all for their injuries. In 2008, that number was just over 11,000.

These numbers clearly illustrate the falsity of tort reform arguments. Medical malpractice is not a burden on health care. In fact, the vast majority of those injured by medical malpractice receive no compensation of any kind. Likewise, the doctors and hospitals responsible for those injuries escape the burden of their harmful behavior.

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Instead, the financial burden is shifted from the responsible medical provider to the innocent patient who may have suffered permanent injuries or death. The burden is shifted to the patient and his or her family who may have suffered catastrophic damages in the form of permanent impairment or wrongful death along with the resulting loss of income to the family. In turn, this burden is most often shifted to society as a whole when future medical care, which may last a lifetime, must be provided by Medicaid or Medicare. It is shifted further to society when the injured person is placed on Social Security Disability, or the family is left destitute in the case of wrongful death.

The title of the IOM report sums it up "To Err is Human." Doctors, as do we all, do make mistakes. The rest of us pay for our mistakes. Why is the medical profession exempt? What about going to medical school justifies that doctors, who have our health and lives in their hands, should be immune from responsibility for their mistakes?

The professions should be held to a higher standard than the general public, not a lower standard. Acceptance of responsibility for harm done to patients is fundamental to professionalism. The absence of responsibility is a disservice to the public, and a disservice to the vast majority of medical professionals that do perform their jobs professionally and competently.

Should any industry that causes 44,000 to 98,000 deaths per year through the negligence or incompetence of its some of its members be allowed to cry injustice because their insurance premiums have gone up slightly? Perhaps they should be arguing against their insurance companies and not against the compensation of injured patients.

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