And Here's Another Reason....

October 11, 2011 by Sean Wajert

...why medical monitoring often does not make sense.

In our posts on medical monitoring, we have pointed out that even in those jurisdictions which do recognize this type of claim/damages, plaintiffs typically must show that the proposed medical monitoring regime is reasonably medically necessary. Some courts articulate the notion that the testing be consistent with the standard of care, while others require the monitoring be reasonably necessary according to contemporary scientific principles.

An essential result of this is that the screening cannot risk doing more harm than good. While the pre-load of a typical jury pool may be that monitoring is *always* helpful, the reality is that many forms of screening have significant potential costs and risks, associated with the procedure or the inevitable follow-up response to a positive test finding --which may turn out to be a false positive finding. If those (and other) costs are not outweighed by the decrease in disease mortality fostered by the testing, then the monitoring doesn't make sense medically, and should not be available in a legal setting.

That is why we read with some interest the recent reports that the U.S. Preventive Services Task Force, which studies health screening measures, is planning to downgrade its recommendation on a common form of prostate cancer screening (PSA). The test now gets a "D," which wasn't good when *MassTortDefense* was in school, and actually means it recommends against the screening because there is moderate or high certainty that the screening has no net benefit or that the harms outweigh the benefits.

The Task Force recognized that high or increasing levels of PSA can indicate many things besides an increased risk for prostate cancer; PSA tests have resulted in high rates of false positives (10-15%) and thus over-treatment for small, slow-growing cancers that will never actually cause harm. Those treatments, surgery and radiation, are not benign. In contrast, the latest studies of those screened show no statistically significant benefit after 10 years.

The point here for our readers is that if a commonly used, widely accepted test can be shown after actual use to risk more harm than good, then how questionable are the new technologies, made-for-litigation screening programs that plaintiffs' hired experts concoct for a class action?