

# ISSUE BRIEF:



REFORMING MALPRACTICE,  
PROMOTING SAFETY



## THE PROBLEM

The medical malpractice system in the United States is broken. The high cost of malpractice premiums has garnered the most attention in the media, but patients who have been injured as a result of negligence have also been ill-served by the system. Fewer than 5 out of every 100 patients injured by negligence is compensated. On the other hand, many of the malpractice suits brought against doctors don't actually involve any negligence at all.<sup>1</sup>

The ostensible goals of the medical malpractice system are threefold: compensate patients injured as a result of negligence, prevent future negligent actions by doctors, and make those doctors who do act negligently pay a penalty for their actions. None of these goals has been achieved. As noted, 95 out of 100 patients who have been injured as a result of medical negligence aren't compensated. Very little evidence suggests that the threat of malpractice reduces the amount of negligence or injury occurring in our health care system. Nearly 100,000 persons die each year as a result of medical mistakes in the United States.<sup>2</sup> Rather than deterring malpractice, the current system actually promotes it by causing doctors and hospitals to hide their mistakes for fear of being sued. Clearly, this culture of worried secrecy undermines patient safety. Lastly, corrective justice is not achieved because doctors who are successfully sued usually don't pay higher insurance premiums than those who are not.

If the medical malpractice system is so broken, why hasn't it been fixed? Part of the reason is that each interested party, whether it's doctors, or lawyers, or patient advocates, looks only at one part of the system—the part that affects them directly—and wants to change just that part. No one is looking at the system as a whole. The National Physicians Alliance believes that everyone's interests will be better served by embracing dramatic reform to the existing system.

## PROPOSED NPA SOLUTION

The NPA aims to develop a new system that will improve safety, increase efficiency, promote fairness, discourage frivolous suits, compensate a greater percentage of injured patients, and will do it all for less money than we currently spend in acrimonious battle. The NPA has a plan that will do just that, but will also consider any and all proposals that promise to achieve these goals.

The NPA proposes that the premiums that doctors now spend on malpractice insurance go into a medical injury compensation fund. Doctors would no longer be vulnerable

to malpractice lawsuits. Patients who have been injured during their medical care would be compensated from this fund based on the severity of their injury and the impact on their lives.

Local patient safety councils comprised of both providers and consumers will receive reports of injuries. The councils will investigate why the injury took place and how changes could be made that would prevent future injuries from occurring. The local patient safety council will also report to the state licensing board any physician who has a persistent pattern of negligent care that might reflect a lack of competence.

## QUESTIONS AND ANSWERS

**Q: If we do away with the threat of malpractice suits, won't we lose the ability to deter negligence?**

**A:** There's no evidence that the current system of malpractice effectively deters negligence. In fact, it may contribute to the injuries that patients suffer by preventing open and honest discussion of why injuries occur. Our proposal will uncover the veil of silence that too often pervades the medical care system and covers up mistakes. Our approach will lead to a safer health care system and fewer patient injuries.

**Q: Will it be more difficult for patients who have been injured to receive compensation?**

**A:** On the contrary, our system will make it much easier for patients to be compensated. Doctors and nurses will be much more willing to disclose unintentional injuries to patients without the threat of a malpractice suit looming overhead. In other countries where such a system exists<sup>3</sup>, doctors even assist the patients in filling out the paperwork to obtain compensation. Remember, in our current system, 95 out of 100 patients who are injured as a result of negligence receive no compensation at all.

**Q: Won't the new system cost a lot more money if more patients will be compensated?**

**A:** The new system will be far more efficient than the current malpractice tort system. We will eliminate the high cost of litigation and substantially reduce the cost of administration. The amount of compensation will be much more reasonable than some of the enormous settlements and jury awards that come out of the current system. Finally, the new system will improve the safety of the whole health care system, thus reducing the costs due to injury in the long run.

**Q: Will the new system be fair to patients who have been injured?**

**A:** The new system will be much fairer than the current system because the compensation that a patient receives will be based exclusively on the injury suffered and without the costly legal burden of proving negligence.

### References

<sup>1</sup> Studdert DM, Mello MM, Gawanda AA, et al. Claims, Errors, and Compensation Payments in Medical Malpractice Litigation. *N Engl J Med* (2006) 354:2024–33.

<sup>2</sup> Institute of Medicine. 2000. *To Err Is Human: Building a Safer Health Care System*. eds. LT Kohn, JM Corrigan, and MS Donaldson. Washington, D.C.: National Academy Press.

<sup>3</sup> Bismark M, Paterson R. No-Fault Compensation in New Zealand: Harmonizing Injury Compensation, Provider Accountability, and Patient Safety. *Health Aff* (2006) 25(1):278–83.



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