

# **MALPRACTICE INSURANCE CRISIS - "WHAT'S UP, DOC?"**

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The medical malpractice insurance crisis looming over America's doctors reminds me of the first time I got a hickey on my neck. I spent a lot of time denying that I had any role in it getting there, as though perhaps some hickey fairy gave it to me while I slept innocently during the night. Likewise, we physicians have been pointing scalpels at lawyers and insurance companies as the root cause of the malpractice insurance crisis while failing to effectively address the fact that the crisis is partly our fault. Doctors want the public to think we are entirely innocent in the malpractice crisis but there is a hickey on the neck of the medical profession that would suggest otherwise.

That hickey is the medical profession's failure to make its practice of medicine as free of errors as humanly possible. That failure has left the public thinking it cannot trust physicians to solve the problem of errors in medicine without the cudgel of lawyers and huge malpractice awards.

The problem is not that physicians don't care about medical errors. They do, and deeply. Most are dedicated, compulsive, driven perfectionists who carry the misery of their mistakes forever. The problem is that physicians have failed to understand that passion for perfection is not enough to prevent errors, nor is the commitment of the individual physician. Error prevention in medical care is about teamwork, and is difficult, grinding, boring, sometimes seemingly silly work that requires physician egos to be parked at the door. Most physicians are better at parking the car.

As a result America's physicians have failed to adopt cross-checking practices for crucial decisions, a practice widely used by airline pilots and others who need to avoid catastrophic errors. As a profession they have not been out in front advocating for the error-reducing process of computerized physician order entry in hospitals. They have failed to force fellow physicians with illegible handwriting on prescriptions and hospital orders to clean up this inexcusable source of potential errors. Many physicians have resisted national initiatives to prevent wrong site surgery (amputating the wrong leg, for example) by marking in ink the limb to be operated on. In 2001, in a telling and frustrated response to this resistance, the Joint Commission on Accreditation of Hospitals and Healthcare Organizations appealed over doctors' heads directly to their patients, telling patients to mark surgery sites themselves. Worst of all, physicians have too often failed to force their incompetent peers to clean up their acts or find other work.

On top of it all, every darn day some physician somewhere appears to screw up big time in a way that appears so easily preventable that the public is left shaking its head and wondering, "What the heck is up, Doc?" This March, for example, a transplant surgeon at Duke University Medical Center - one of the country's best hospitals - failed to ensure that the blood type of his 17-year old transplant patient matched the blood type of the

transplanted donor heart and lungs. Her immune system rejected the new organs and she died.

The case was a perfect demonstration of what is wrong with the current 'system' of error prevention in physician care; it is not a system, because the physician alone is responsible for much of physician error prevention, and that is not enough. At Duke the entire weight of preventing such an error relied on a brilliant doctor to never make a mistake about blood type, which is a mistake because even brilliant doctors make mistakes. The transplant surgeon never insisted that someone check his checking of the blood type, perhaps because he, like most physicians, was reluctant to have others assume he might make a mistake and check his work. His fellow physicians at Duke and the hospital never insisted that the crucial issue of organ blood type matching be a team decision with fail-safe redundancies.

Such cases are needless tragedies for the patients. For physicians such mistakes are black eyes which damage the medical profession's credibility, and weaken its argument that capping damage awards is the best way to rein in the rapidly rising cost of malpractice insurance premiums.

Unfortunately, few physicians see the growing credibility gap they face on the malpractice issue. Too many talk about lawyer greed and too few talk about preventing physician errors. Small wonder then that the web site of the American Medical Association (the country's biggest physician association) is bulging with material on the malpractice crisis and what doctors can do to pressure politicians to limit malpractice damage awards, but says little about physicians fixing their part of the problem. The AMA's guidelines on avoiding medication errors, for example, say physicians should write legibly, not must write legibly. Right - my nephew should write legibly too, but he is only twelve and does not write prescriptions for potentially deadly medicines.

Physicians may not be talking much about their errors but others are. Articles about the malpractice insurance crisis in the popular press are replete with stories of physician errors. Trial lawyers trumpet these stories of patients who have been injured, maimed, and killed by medical errors. There are now books on the subject, including 'Wall of Silence: The Untold Story of the Medical Mistakes That Are Killing Millions of Americans.'

Physicians are standing on a bum leg of credibility when they demand malpractice protection by legislative mandate but fail to demand error-reducing measures such as surgical site identification and consistently legible handwriting from all of their colleagues. Only real leadership on these and other efforts in medical error reduction will earn America's physicians the right to reclaim their leadership in the malpractice debate. That cannot happen, however, until physicians stop necking with the principle of error-free medicine and marry it instead into the way they work. Then, when physicians demand malpractice reform, we will be more right and less self-righteous.