

Chapter I

The Medical Malpractice Epidemic

“The malpractice crisis is malpractice.”

— Vice President Albert Gore, May, 1993

“[The problem] is not a malpractice insurance crisis. Nor, contrary to popular mythology, is the problem a lawsuit crisis. The real crisis is the degree of malpractice itself.”

— *Business Week*, August 3, 1987

“Medical care may be hazardous to your health.” That frightening warning is the principal conclusion of numerous studies. Independent scientific research has sketched out the frightening dimensions of death and injury caused by negligent, incompetent and criminal doctors and hospitals.

The Harvard Medical Practice Study, conducted by the University’s prestigious School of Public Health, is one of the most comprehensive and objective empirical studies of malpractice ever performed. A review of more than 31,000 randomly selected hospital records of patients discharged in New York State in 1984 found that 3.7 percent of patients suffered “adverse events” or some form of medical mistake and injury during their hospitalizations.¹¹ More than 27 percent of these patients should be considered, as a legal matter, victims of medical negligence, the task force concluded.¹²

Projecting these percentages for all hospital discharges statewide, the Harvard study estimated that there were 98,610 “adverse events” for hospitalizations in New York in 1984. Of these, 27,177 “adverse events,” or about 1 percent of all hospital discharges, were due to negligence — a total of 6,895 deaths and 20,282 injuries.¹³

Applying the New York State figures nationwide would mean, for example, that in 1988, negligence in American hospitals was responsible

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for 80,000 deaths and 234,000 injuries, and even this shocking estimate is understated because it includes only injuries and deaths in hospitals.

A more recent extrapolation, by a Harvard Law School Professor who co-authored the Harvard Medical Practice Study, calculates the annual number of dead at 150,000.¹⁴

The Harvard findings are consistent with those of other investigations:

- A study of the records of 20,000 patients admitted to California hospitals in 1974 found that 5 percent of the patients experienced an “event” which could be considered malpractice.¹⁵
- In 1976, the Department of Health, Education and Welfare’s Malpractice Commission estimated that one-half of one percent of all patients entering hospitals are injured there due to negligence.¹⁶
- A 1985 American College of Surgeons “Patient Safety Manual” cites a study conducted at the well-regarded Peter Bent Brigham Hospital of Boston and the Harvard Medical School in which 36 patients out of 5,612 consecutive surgical admissions suffered death or serious injury “due to error during care” — a 0.64 percent injury rate.¹⁷
- The RAND Corporation studied records of 182 patients who died in hospitals in 1985. Three independent physicians reviewed the files and determined that 14 to 27 percent of the deaths were probably preventable. The study also found evidence that a limited number of factors caused most preventable deaths.¹⁸
- A 1991 study by the Physician Payment Review Commission concluded that “the evidence is compelling that the rates of inpatient medical injury and negligent medical injury are substantial.”¹⁹

- A surgeon and lecturer at the Harvard School of Public Health calculates “that more than 1.3 million hospitalized Americans — nearly one in 25 — are injured annually by medical treatment.” About one-quarter of the estimated 1.3 million injuries are caused by negligence, and more than two-thirds of them are preventable, according to Lucian L. Leape.²⁰
- Public Citizen, the nonprofit consumer advocacy organization founded by Ralph Nader, estimates that between 150,000 and 300,000 Americans are injured or killed each year by doctors’ negligence, based on the results of research studies.²¹

On their face, these studies collectively demonstrate that the United States is in the midst of an epidemic of medical negligence. Unfortunately, the reports underestimate the rate of medical malpractice. The most timely and thorough study, by the Harvard School of Public Health, did not include death and injury from negligence that occurred outside a hospital setting, in facilities such as clinics, physicians’ offices, psychiatric hospitals, or nursing homes. Nor does the Harvard study reflect fatalities or injuries caused by defective medical devices or drugs.

Moreover, the studies often include only incidents of negligence that actually result in injury. Many of the studies do not measure every occurrence of substandard care that has the potential to produce injury but, fortunately, does not result in injury.

Finally, these figures do not include cases of criminal acts by physicians against patients. There are no estimates of the number of such cases nationwide.

With so many Americans at risk, one would expect a national effort to prevent medical malpractice. Instead, the leaders of the medical profession and the captains of the insurance industry have turned the issue upside down, proclaiming that there are too many malpractice lawsuits!

The industry’s unrelenting attack on the legal rights of malpractice victims has all but obliterated the simple truth that it is bad medicine which leads to malpractice litigation. As for the victims of medical malpractice — consumers who have put their trust in their doctors and

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hospitals — the AMA, the insurance industry and their political allies have turned them into invisible statistics.