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***New England Journal of Medicine:* The Legal System Works!**

The oft-repeated political argument for restricting patients' legal rights is that undeserving patients are overburdening the system with too many "frivolous" medical malpractice lawsuits.¹ However, on May 11, 2006, the *New England Journal of Medicine* published a definitive study that debunks this myth once and for all.²

As summed up in Harvard's release accompanying the article, "the new study by researchers from the Harvard School of Public Health and Brigham and Women's Hospital challenges the view that frivolous litigation is rampant and expensive."

Among the studies findings:

"Portraits of a malpractice system that is stricken with frivolous litigation are overblown."

- **Most injuries that result in claims are caused by medical error.** Sixty-three percent of the injuries were judged to be the result of error and most of those claims received compensation; on the other hand, most individuals whose claims did not involve errors or injuries received nothing.
- **Claims typically involve injuries that are severe.** Eighty percent of claims involved injuries that caused significant or major disability or death.
- **Even though the large majority of claims (63 percent) involve error, those that do not involve error are not "frivolous."** As noted by the authors, "The profile of non-error claims we observed does not square with the notion of opportunistic trial lawyers pursuing questionable lawsuits in circumstances in which their chances of winning are reasonable and prospective returns in the event of a win are high. Rather, our findings underscore how difficult it may be for plaintiffs and their attorneys to discern what has happened before the initiation of a claim and the acquisition of knowledge that comes

¹ As recently as a May 1, 2006, President Bush complained about "the glut of frivolous lawsuits that are driving good doctors out of practice and driving up the cost of health care." "REMARKS BY PRESIDENT GEORGE W. BUSH AT THE AMERICAN HOSPITAL ASSOCIATION CONFERENCE," May 1, 2006.

² David M. Studdert, Michelle Mello, et al. "Claims, Errors, and Compensation Payments in Medical Malpractice Litigation," *New England Journal of Medicine*, May 11, 2006.

from the investigations, consultation with experts, and sharing of information that litigation triggers.”

The vast majority of resources go toward resolving and paying claims that involve errors. “Disputing and paying for errors account for the lion’s share of malpractice costs.”

Most instances of medical malpractice do not result in a lawsuit. “Previous research has established that the great majority of patients who sustain a medical injury as a result of negligence do not sue. ... [F]ailure to pay claims involving error adds to a larger phenomenon of underpayment generated by the vast number of negligent injuries that never surface as claims.”

Few claims result in court trial and with regard to those that do, juries are conservative.

- Only fifteen percent of the claims were decided by trial verdict.
- Patients “rarely won damages at trial, prevailing in only 21 percent of verdicts as compared with 61 percent of claims resolved out of court.”

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