

***New England Journal of Medicine:* Litigation Against Hospitals Improves Patient Safety**

On May 11, 2006, the *New England Journal of Medicine* published a breakthrough article arguing that litigation against hospitals improves the quality of care for patients.¹ The article also confirmed that removing the threat of litigation would do nothing to improve the reporting of errors since fear of litigation is not main reason doctors do not report errors. Highlights of this article include:

- “In the absence of a comprehensive social insurance system, the patient’s right to safety can be enforced only by a legal claim against the hospital. ... [M]ore liability suits against hospitals may be necessary to motivate hospital boards to take patient safety more seriously.”
- “The major safety-related reasons for which hospitals have been successfully sued are inadequate nursing staff and inadequate facilities.” For example, the Illinois Supreme Court found that a hospital was at fault for failing to provide enough qualified nurses “to monitor a patient, whose leg had to be amputated because his cast had been put on too tight.”
- In a 1991 Pennsylvania Supreme Court case, the court listed four areas from which hospital safety obligations should flow: “the maintenance of safe and adequate facilities and equipment, the selection and retention of competent physicians, the oversight of medical practice within the hospital, and the adoption and enforcement of adequate rules and policies to ensure the quality of care for patients.”
- Anesthesiologists were motivated by litigation to improve patient safety. As a result, this profession implemented 25-years-ago, “a program to make anesthesia safer for patients” and as a result, “the risk of death from anesthesia dropped from 1 in 5000 to about 1 in 250,000.”
- Only one quarter of doctors disclosed errors to their patients, but “the result was not that much different in New Zealand, a country that has had no-fault malpractice insurance” [i.e., no litigation against doctors] for decades. In other words, “There are many reasons why physicians do not report errors, including a general reluctance to communicate with patients and a fear of disciplinary action or a loss of position or privileges.”
- “[B]y working with patients (and their lawyers) to establish a patient’s right to safety, and by proposing and supporting patient-safety initiatives, physicians can help pressure hospitals to change their operating systems to provide a safer environment for the benefit of all patients.”

May 2006.

¹ George J. Annas, J.D., M.P.H., “The Patient’s Right to Safety – Improving the Quality of Care through Litigation against Hospitals,” *New England Journal of Medicine*, May 11, 2006.