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LITIGATION IMPROVES PATIENT SAFETY AND ESTABLISHES RESPONSIBILITY FOR ERRORS

- “[T]he reason why tort liability promotes patient safety is obvious. Providers are rational. When injuring patients becomes more expensive than not injuring them, providers will stop injuring patients. In short, the notion that errors would decline if tort liability diminished is ridiculous.” Maxwell J. Mehlman and Dale A. Nance, *Medical Injustice: The Case Against Health Courts* (2007) at 47, citing David A. Hyman & Charles Silver, *Medical Malpractice Litigation and Tort Reform: It's the Incentives, Stupid*, 59 Vand. L. Rev. 1085, 1131 (2006).
- The *Harvard Medical Practice Study*, on which the Institute of Medicine based in part its seminal 1999 book *To Err Is Human, Building a Safer Health System*, found, “[T]he litigation system seems to protect many patients from being injured in the first place. And since prevention before the fact is generally preferable to compensation after the fact, the apparent injury prevention effect must be an important factor in the debate about the future of the malpractice litigation system.” Maxwell J. Mehlman and Dale A. Nance, *Medical Injustice: The Case Against Health Courts* (2007) at 47, citing Paul C. Weiler, Joseph P. Newhouse, & Howard H. Hiatt, *A Measure Of Malpractice: Medical Injury, Malpractice Litigation, And Patient Compensation* 133 (1993).
- An article in the May 11, 2006, the *New England Journal of Medicine* argued that litigation against hospitals improves the quality of care for patients. The author noted, “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.” 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.
- In addition to anesthesia procedures, catheter placements, drug prescriptions, hospital staffing levels, infection control, nursing home care and trauma care have all been made safer as a result of litigation. Meghan Mulligan & Emily Gottlieb, *Lifesavers: CJ&D’s Guide to Lawsuits that Protect Us All*, Center for Justice & Democracy (2002).
- Dr. Wayne Cohen, then-medical director of the Bronx Municipal Hospital, put it this way: “The city was spending so much money defending obstetrics suits, they just made a decision that it would be cheaper to hire people who knew what they were doing.” Dean Baquet and Jane Fritsch, “New York’s Public Hospitals Fail, and Babies Are the Victims,” *New York Times*, March 5, 1995.
- Tom Baker, Connecticut Mutual Professor of Law and Director of the Insurance Law Center at the University of Connecticut School of Law, wrote, “Responsibility lies at the heart of tort law. A tort lawsuit is a public statement that a defendant has not accepted responsibility, coupled with the demand to do so. Malpractice lawsuits ask doctors and hospitals to take responsibility for their mistakes, not just prevent future mistakes or to compensate the patient, but also because taking responsibility is the morally proper thing to do.” (Tom Baker, *The Medical Malpractice Myth* (2005) at 112, 113).