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# Are Medical Malpractice Lawsuits out of Control?

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Let's do something hypothetical, but real enough to make a point. A Senator appears at a friend's home where you are a guest. He's a gentleman, but at a key moment in a lovely evening he cannot resist attacking your profession. The party becomes quiet. People are listening. "Counselor," he says, "medical malpractice lawsuits are out of control."

It's your opportunity. You decide you take it, but you need Talking Points and you need them fast. Here are mine:

**Accountability**
When people are not accountable for the harm they cause, they cause more harm. Incredibly, 98,000 people die every year due to medical errors. Thousands more survive, and it is certainly true that most errors never come to light.

**Big Business Dominates Health Care**
Managed health care organizations pay doctors and hospitals based on steeply discounted reimbursement rates. "The difference between the reasonable cost of care and the amount paid to doctors and hospitals by managed care is often as much as 600 percent to 800 percent." The result is not hard to imagine. Some doctors make up the difference by seeing more patients in less time and then proceed to make preventable errors. The bargain is intentional. The result is foreseeable.[1]

**Frivolous Lawsuits**
The so-called frivolous lawsuit is myth. It exists in the market place but it's extremely rare in the courthouse. How do we know this?

- Suing doctors is risky business, and lawyers aggressively avoid taking frivolous cases.
- Frivolous lawsuits don't generate income.
- If a lawsuit is frivolous, the lawyer is not reimbursed for the money he invests in it; typically $250,000.
- If a lawsuit is frivolous, the lawyer pays defense costs, probably another $250,000.
- Insurance companies promote the myth of frivolous lawsuits in the "market place" because fear sells insurance.

**Wall Street on Frivolous Lawsuits**
Insurance companies do not buy office equipment that does not exist and they do not buy worthless lawsuits. The reason is not hard to imagine: neither one has value.

• Typically, stock in insurance companies is owned by large institutional investors (e.g., banks, private pension funds, etc.) who read financial statements and know how company executives spend their money (particularly large amounts).
• Despite the hundreds of billions claimed to have been spent settling worthless claims over the past 20 years, investors have never sued an insurance executive for wasting money on worthless lawsuits.
• Insurance companies tell two stories. They tell investors they spend millions to settle meritorious cases and they tell the public they are being shaken down by lawsuits that have no value. Which is correct? Answer: Wall Street.

**Defensive Medicine**

The Senator, who practiced medicine before he practiced public policy, makes his rejoinder. He says defensive medicine is a common practice and it costs the public billions. He wants FBI agents to pose as patients and arrest doctors for fraud.[2] The cost is much exaggerated. Insurance companies control health care and they don't spend money when they do not have to.

• They require pre-authorization; this means that tests and procedures are not done unless a company approves them first.
• They do not reimburse doctors for medical costs unless the costs are "reasonable and necessary."
• They do not retain doctors who over-treat and they do not renew annual PPO-contracts with clinics that do the same.
• Diagnosing illness by excluding other possible illnesses is reasonable and necessary. It is good health care. The method is proven, thoughtful and scientifically sound. It saves lives. Insurance companies know this; it is the reason they pay.

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[1] *See* Robert G. Eisele, *Big Business Dominates Health Care*, Seattle Post Intelligencer, Jan. 15, 2008, *available at* www.seattlepi.com/opinion/347475_healthcare16.html.

[2] A Bipartisan Meeting on Health Reform, Feb. 25, 2010, *available at* www.whitehouse.gov/health-care-meeting/bipartisan-meeting.

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