

## **Medical Malpractice Cases in Pennsylvania**

The truth about medical malpractice verdicts is that, in the last 10 years, payouts in medical malpractice cases, especially the most serious claims, have fallen dramatically. In addition, the number of cases filed is stable at approximately 1,400 to 1,500 per year, while the Patient Safety Authority reports well over 330,000 serious events and incidents per year. That means that a very small number of people actually sue when they are innocent victims of medical liability.

The contingent fee system, much maligned, is the poor person's key to the courthouse. It is always the wish of those who are tone-deaf to medical liability and medical malpractice that victims of tragic errors should have no representation. You will never see a suggestion that those who defend unsafe medical healthcare systems should have their fees capped.

The reality of medical liability in Pennsylvania is that it is the equivalent of several jumbo jets crashing and killing all aboard every year. Approximately 8-10% of all people who go into hospitals will wind up with a hospital-acquired infection. This is totally unacceptable, and studies have shown that it could be reduced.

Infrastructure failures are endemic because, in the United States, cooperation and coordination between healthcare systems is at a minimum. They are competitors and they do not act in a cooperative environment on behalf of their patients.

To make matters worse, secret peer review keeps from the public and from the patient both the errors which occur in the hospital setting and the history of unsafe doctors.

Recently, the Pennsylvania Supreme Court reinstated a "venue" rule for medical cases which applies to every other type of case in Pennsylvania. A claim can be brought in any county where the institution is located, does business, and has some connection with the claim. Those who would like to protect hospitals and healthcare systems from the consequences of medical malpractice, want to restrict where claims can be brought so as to make it difficult or impossible for innocent injured patients. No such limitations exist in connection with any other type of case in Pennsylvania.

The reality is that we do need changes in medical malpractice, and here are some suggestions:

1. Peer Review. Peer review should not be secret but rather should be open and should involve the patient and the patient's family so that the cause of medical errors can be quickly recognized and addressed.

2. Root Cause Analysis. Why medical errors occur and how they could be prevented should be public and should involve hospital

personnel, Pennsylvania's Patient Safety Authority and the patient or the patient's family.

3. Readable and Understandable Electronic Medical Records and Billings. Anyone who has ever been a patient is shocked at how difficult it is to obtain records, especially medical records, or to understand billings. Most people just give up and pay the bill. This columnist has proposed specific legislation to address unusable, unreadable electronic medical records, to make them more available to a variety of healthcare providers, and to assure that billings are fair and understandable.

4. The Wall of Silence. Doctors protect other doctors. Certain medical groups and societies will shun or blacklist doctors who tell the truth about what has happened to patients. That must be banned by law. No more blacklisting of doctors, and in fact doctors should be required to tell the truth about what has happened to their patients and other patients where they have seen blatant incidents of medical malpractice. Whistleblower protection must be amped up dramatically.

5. Arbitration and Payment of Claims Before Litigation. There are some institutions which will look at claims prelitigation and actually try to resolve them. However, they are a tiny minority. Hospitals and healthcare systems must be held more accountable and must utilize pre-dispute attempts to resolve claims.

6. Cooperation with the Patient Safety Authority. It is well-known that Pennsylvania law is violated every day by the medical healthcare system. They are required to report serious events to the Patient Safety Authority, which is not even permitted to take action against the healthcare system, but is merely a reporting agency. Even so, hospitals frequently ignore the requirement of reporting serious events and the Patient Safety Authority is helpless to do anything about it.

7. Strengthen the Pennsylvania Department of Health. The Pennsylvania Department of Health is a toothless monster. It receives information of serious events, just like the Patient Safety Authority does, but does virtually nothing unless there is some sort of intentional misconduct by a healthcare provider, which can almost never be proven. Unfortunately, both the Patient Safety Authority and the Department of Health act as a fraternity with the hospitals and medical staff.

8. Financial Compensation. Financial compensation must be assured by a system of compensation robustly addressed by Pennsylvania's Mcare Fund, which pays catastrophic claims, and the Joint Underwriting Authority which provides insurance to high-risk professionals. The entire compensation system for claimants must function

in a coordinated fashion, and should not be designed to make compensation less available.

9. Secrecy. When cases are resolved, hospitals and doctors demand secrecy. Secrecy should be outlawed and banned by the Pennsylvania legislature.

10. Report Cards. Pennsylvania is one of the few states that does not report on the claims and payouts against doctors and hospitals and the reason therefor. Even the Patient Safety Authority, which receives serious event reports, only reports the information to the legislature on a geographic basis, and not per-hospital. The information exists, but it is not shared with the public.

What is absolutely crucial and important is that fair payment be made for grotesque malpractice, such as doctors in Philadelphia who examined babies with infected equipment, causing trauma and death to many of those infants.

While there are those in the state who decry fair and reasonable payment, they do not tell the public that very frequently those payments are reduced because of something called remittitur, reduction, specifically contained in the law, the Mcare Act.

The reality of medical and hospital malpractice in Pennsylvania is that compensation is much too difficult to obtain, frequently unavailable, and presents barriers to the innocent injured victims.

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