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Consumer Advocates Fire Back at Medical and Insurance Industries for Malpractice Crisis

Groups Call on Doctors to Stop Blocking Critical Reforms That Would Reduce Medical Errors, Chastise Insurance Industry

WASHINGTON, D.C. – Consumer advocates fired back at the medical and insurance industry lobbies today, challenging them to stop inaccurately blaming rising malpractice rates on consumer remedies in the courtroom and calling on doctors to work with consumer and patient groups to weed out bad doctors, implement patient safety reforms and reform the insurance industry.

At a press conference, representatives from the Center for Medical Consumers, Consumer Federation of America and Public Citizen said that the medical establishment is itself at fault in the malpractice insurance crisis. It has refused to take steps to reduce medical errors and is lying to the public (malpractice claims have dropped) to divert attention from medical errors and insurance industry failures. Insurance companies are hiking rates because the economic downturn has caused them to lose money on investments, not because of jury awards, the groups said.

"Doctors are falsely demonizing America's legal system rather than saving tens of thousands of lives and litigation costs by preventing careless or unnecessary medical errors, such as operating on the wrong part of the body," said Joan Claybrook, president of Public Citizen. "Most injured people don't sue. They turn to the courts in egregious situations. Capping damages will only hurt those who have suffered the most. Juries, which hear all the evidence, should decide how much an injured patient deserves, not politicians, who are trying to please their wealthy insurance industry contributors."

Just 5.1 percent of doctors account for 54.2 percent of the malpractice payouts, according to data from the National Practitioner Data Bank. Of the 35,000 doctors who have had two or more malpractice payouts since 1990, only 7.6 percent of them have been disciplined. And only 13 percent of doctors with five medical malpractice payouts have been disciplined.

"The American Medical Association's depiction of the 'crisis' – one focused on malpractice insurance premiums – conveniently serves to distract everyone from the reality that it is organized medicine that continues to vigorously oppose a series of Institute of Medicine recommendations aimed at reducing the number of medical errors," said Arthur Levin, director of the Center for Medical Consumers and member of the Institute of Medicine committee that issued a groundbreaking report on medical errors in 1999. "By working to obstruct these recommendations, organized medicine is saying it is acceptable for patients to continue to suffer preventable harm."

Between 44,000 and 98,000 people die in hospitals annually each year due to preventable medical errors, the Institute of Medicine found. A survey of doctors and other adults released in December in the *New England Journal of Medicine* found that more than a third of the doctors said they or their family members had experienced medical errors, most leading to serious health consequences. The cost to society in terms of disability and health care costs, lost income, lost household production and the personal costs of care are estimated to be between \$17 billion and \$29 billion. In contrast, the medical liability system costs \$6.7 billion annually, about what is spent on dog food each year.

The groups released a large amount of material and data aimed at debunking myths, including a comprehensive malpractice briefing book, [Medical Misdiagnosis: Challenging the Malpractice Claims of the Doctors' Lobby](#), that contains case studies of states that doctors have identified as having medical malpractice crises, including Mississippi, Nevada, Pennsylvania, West Virginia and Florida. The information shows that:

- § There is no growth in the number of new medical malpractice claims. According to the National Association of Insurance Commissioners, the number of new medical malpractice claims declined by about four percent between 1995 and 2000. There were 90,212 claims filed in 1995; 84,741 in 1996; 85,613 in 1997; 86,211 in 1998; 89,311 in 1999; and 86,480 in 2000.
- § While medical costs have increased by 113 percent since 1987, the amount spent on medical malpractice insurance has increased by just 52 percent over that time.
- § Insurance companies are raising rates because of poor returns on their investments, not because of increased litigation or jury awards, according to J. Robert Hunter, director of insurance for the Consumer Federation of America. Recent premiums were artificially low.
- § Malpractice insurance costs amount to only 3.2 percent of the average physician's revenues.
- § Few medical errors ever result in legal claims. Only one malpractice claim is made for every 7.6 hospital injuries, according to a Harvard study. Further, plaintiffs drop 10 times more claims than they pursue, according to Physician Insurer Association of America data.

Solutions to the malpractice problem lie in reducing medical errors, the groups said. Medical boards should discipline all bad doctors, should sever links with state medical societies and should be given more money and staff to investigate complaints. States should require hospitals and other health care providers to institute meaningful risk prevention programs. Doctors should be recertified based on a written exam and audit of their patients' medical records. Also, hospitals should implement measures to curb errors, such as using computers to order and track prescriptions (these can cut errors by 55 percent), requiring proper hand-washing to reduce infections, addressing the nursing shortage, and reducing the long hours of medical residents.

"There are serious ethical questions about doctors striking and preventing patients from getting medical care," said Dr. Sidney Wolfe, director of Public Citizen's Health Research Group, which ranks state medical boards annually on how well they discipline doctors.

"Doctors should be pressuring medical boards to do a better job of disciplining incompetent doctors."

Also, the insurance industry should rate doctors on performance when setting malpractice premiums and seek to decertify doctors with numerous malpractice claims. Risk should be spread, reducing the number of classifications of doctor specialties. Risk pools for some are too small and thus overly influenced by: 1) a few losses; and 2) the concentration in a few specialties of doctors handling the highest risk patients.

"If you're going to solve this insurance crisis, you need insurance reform," Hunter said.

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Organized Medicine Has Opposed Key Institute of Medicine Recommendations on Patient Safety

**Statement By Arthur A. Levin, MPH
Director Center for Medical Consumers**

I had the privilege of serving as a member of the Institute of Medicine's Committee on Quality of Health Care in America that issued two major reports. The first report, "To Err is Human," was released in November 1999, over three years ago. It documented the staggering epidemic of medical errors occurring in our health care system.

The Committee's second report, "Crossing the Quality Chasm," was published in February 2001 and described what a quality 21st century U.S. health care system should look like. The Chasm report suggested there are six "aims" which a quality health care system must embody: it should be safe, effective, patient-centered, timely, efficient and equitable.

We are here today because, instead of confronting the medical error epidemic and vigorously pursuing the recommendations of the Institute of Medicine and others to improve patient safety, organized medicine is investing its resources and not inconsiderable political power in a firestorm of activity that includes proposed state and federal "tort reform" legislation and front page and prime time stories describing how a so-called "crisis" in medical malpractice insurance premiums is what is hurting patients. Nothing could be further from the truth. It is the epidemic of medical errors that is hurting patients.

The AMA's depiction of the "crisis" – one focused on malpractice insurance premiums – conveniently serves to distract everyone from the reality that it is organized medicine that continues to vigorously oppose, both at the federal and state level, a series of recommendations aimed at reducing the number of medical errors that emerged from the IOM work. Such obstruction of efforts to make real progress in "curing" the medical errors epidemic focuses on several key recommendations of the IOM Committee.

The executive summary of the IOM medical errors report, after enumerating the substantial dimensions and costs, both in human and resource terms, of the medical error epidemic, went on to say:

"Yet silence surrounds this issue [of medical errors.] For the most part consumers believe they are protected. Media coverage has been limited to reporting of anecdotal cases. Licensure and accreditation confer, in the eyes of the public, a "Good Housekeeping Seal of Approval." Yet licensing and accreditation processes have focused only limited attention on the issue, and even these minimal efforts have confronted some resistance from health care organizations and providers

The report goes on to say:

"The goal of this report is to break this cycle of inaction. The status quo is not acceptable and cannot be tolerated any longer.... it is simply not acceptable for patients to be harmed by the same health care system that is supposed to offer healing and comfort."

Strong words that made me proud of being part of the Institute of Medicine effort. Perhaps this is a good time to repeat those words written 1999: *“the status quo is not acceptable and cannot be tolerated any longer.”* But by diverting public attention away from the real problem, organized medicine is in fact perpetuating the status quo. Worse, by working to obstruct implementation of a number of the major recommendations critical to improving patient safety, organized medicine is saying “it is” acceptable for patients to continue to suffer preventable harm.

Here are some of the IOM recommendations that organized medicine resists – while it is busy trying to reduce physician practice overhead by denying compensation to those harmed by negligence:

The IOM recommended that there be a nationwide mandatory reporting system of serious errors – those that result in death or serious harm – for hospitals, other institutional providers and ambulatory care systems. And that some of the data collected should be made publically available.

The IOM argued that such a system ensures a response to reports of serious harm, holds organizations and providers accountable for maintaining safety, responds to the public’s right to know, and provide incentives to health care organizations to implement safety systems that reduce the likelihood of such events occurring. Simply put, without mandatory reporting and public disclosure nothing will ever change – at least not significantly.

This recommendation drew immediate fire from the AMA. Then AMA President Nancy Dickey wasted no time in calling out the troops to make sure that this recommendation would go nowhere – and it has not. But without such a system there is no accountability – and no incentive to improve patient safety.

Another recommendation was that health professional licensing bodies should do two important things:

(1) implement periodic re-examinations and re-licensing of doctors, nurses, and other key providers, based on both competence and knowledge of safety practices.

In other words, the IOM recognized the failure of a system of health professional licensure in perpetuity. Its time for a overhaul of an approach to professional licensure that may have been up to the task the last century, but certainly fails to protect the public now. According to the IOM, the rapid pace of change in health care, based on the constant development of new technologies and information make periodic assessment of both physician skills and knowledge essential for patient safety.

(2) work with certifying and credentialing organizations to develop more effective methods to identify unsafe providers and take action.

As the IOM noted, under present systems the time between the discovery of a problem with an unsafe provider, an investigation and subsequent action or sanction can be years. That’s too long for the public to continue to be placed in jeopardy from an unsafe provider.

Organized medicine works overtime to insert more and more due process into the discipline process – and that only lengthens the process. Hospitals, facing the prospect of lengthy litigation, proceed gingerly when considering taking away a physician’s privileges. Managed care plans have been found to include heavily sanctioned doctors – in some cases after their licenses have been suspended – in their panels of doctors. In short, no one is really minding the store and putting patient safety.

The Institute of Medicine challenged the U.S. healthcare system to reduce medical errors by fifty percent by the year 2005. It appears that doctors and other providers will fall far short of that goal. Because of organized medicine’s resistance to nationwide mandatory reporting of errors resulting in serious harm, we do not even have a way of knowing whether things are getting better or getting worse. The failure to meet the IOM’s challenge means that tens of thousands of patients will suffer death or serious harm – outcomes that could well have been prevented – for many more years to come.