
Book Reviews

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The Medical Malpractice Myth. By Tom Baker. Chicago and London: University of Chicago Press, 2005. Pp. 222. \$22.50 cloth; \$14.00 paper.

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With *The Medical Malpractice Myth*, Tom Baker has contributed a lucid and detailed account of the dual problems of medical error and medical malpractice law in the United States. Drawing on, and carefully outlining and explaining, dozens of studies related to medical malpractice, Baker argues against what he calls the “medical malpractice myth.” This myth, ubiquitous in the media and as common knowledge, according to Baker, claims that medical malpractice costs are skyrocketing and driving doctors out of the profession, that plaintiffs sue frivolously, and that undeserving claimants win millions of dollars. Baker’s “mission” is to reframe “the public discussion about medical malpractice lawsuits” (p. 19).

In fact, Baker argues that the real social problem is too much medical malpractice, not too much litigation. Indeed, as many studies corroborate, the vast majority of those who suffer medical malpractice do not sue. Furthermore, medical malpractice insurance premiums are cyclical; it is not litigation that drives these cycles, but rather financial trends and competitive behavior among insurance companies. While undeserving people do sometimes bring claims of medical malpractice, the vast majority of these are settled before trial—and often initiating a suit offers the only way that patients can get information about their medical treatment since “only 30% of patients harmed by medical error [are] told of the problem by the professional responsible for the mistake”(p. 5). According to Baker, the medical malpractice myth serves one purpose: to allow people to “keep ignoring the real, public health problem” of medical error (p. 3). He, on the other hand, wants to defend the law as something that can improve the quality of health care.

This book offers a valuable shift away from malpractice lawsuits to the issue of medical error in the United States. For readers who want the general contours of the argument but do not have time to wade through the detailed evidence offered in each chapter, Baker

offers handy summaries to conclude each section. Nevertheless, the chapters are well worth reading for their analysis of the various studies that propel the argument. Baker is a master at unwrapping the methods and conclusions of various studies and demonstrating what they can and cannot do. This attention to detail results in a finely reasoned argument for malpractice law, which, after all, was not a system designed by plaintiffs' lawyers.

The argument is broken up topically, into eight chapters. Chapter Two shows how little malpractice litigation exists compared to the epidemic of medical malpractice. Pointing out that medical malpractice insurance constitutes less than 1 percent of health care costs, Baker discusses the various studies of medical error, noting that while nearly half of the public have had personal experience with medical errors, most people do not consider medical mistakes as a serious public health problem (p. 39).

Chapter Three offers a lesson about the boom and bust cycles of the insurance industry and its accounting methods. Baker concludes that the average premiums for doctors are quite affordable; the problem is that the premiums are divided in such a way that some specialists pay very high premiums that leave them vulnerable to the ups and downs of the insurance cycle. Chapter Four examines the myth, which he demonstrates as untrue, that patients sue easily and that juries favor plaintiffs. By now, so many studies demonstrate this that it is a bit of a straw man argument. Thus, Baker's real question is why all of this research has not changed people's minds.

Chapter Five makes the case for medical malpractice litigation, arguing that it enables us to better learn the extent of medical malpractice, improve patient safety, compensate some patients, and ultimately to promote "traditional American values like justice, responsibility, and freedom from intrusive government control" (p. 20). Chapter Six demonstrates that medical malpractice litigation does not increase cost or diminish the quality of care for patients; Chapter Seven shows that doctors are not, in fact, leaving the profession. Chapter Eight suggests avenues for legal reform, such as introducing measures to give patients more information on their case without having to bring suit, encouraging doctors to take responsibility for their errors, and creating better systems to protect patients from inevitable human errors.

Baker's *The Medical Malpractice Myth* offers an excellent read. The accessible study is rich in detail and interesting facts and stories. It offers an argument that will be convincing and compelling not only to scholars, but to anyone involved in medical malpractice and its litigation, from medical practitioners to those working in all aspects of insurance provision; to medical patients, prospective patients, and their families. I highly recommend it.