

# MYTHBUSTER

## DOCTORS' VOICES: THE PROBLEM WITH MALPRACTICE IS MALPRACTICE

In March 2002, the American Medical Association (AMA) announced plans to lobby lawmakers and courts in at least 25 states and mount an ad campaign to raise support for limits on injured patients' rights to sue for malpractice, arguing that malpractice lawsuits are the cause of our nation's health care problems. Yet many within the medical profession disagree with the AMA's message:

**Dr. Richard G. Roberts, chairman of the American Academy of Family Physicians and professor of Family Medicine at the University of Wisconsin Medical School, has issued his "Top 10 Myths of Medical Malpractice" in which he lists 10 "Truths" about the civil justice system, including:**

- "About one in 50 hospitalized patients is injured due to negligence, and yet only one in 10 of those files a lawsuit and, among those filing suits, only one in 20 receives money...."
- "There is more malpractice committed than is recognized, litigated or compensated."
- "Plaintiffs in most cases are not 'gold-digging.' The vast majority [of plaintiffs] have (medical) outcomes none of us would want for ourselves or our loved ones."
- Judges and juries "rule in favor of the physician from 70 to 75 percent of the time...."

[http://www.aafp.org/servlet/mntPress?press\\_id=1266&prhtml=afp\\_article\\_browse&actioncode=select](http://www.aafp.org/servlet/mntPress?press_id=1266&prhtml=afp_article_browse&actioncode=select)

**Donald Palmisano, president-elect of the 300,000-member American Medical Association, who founded a company that tells doctors how to avoid malpractice suits, has drawn criticism from members of the medical community. Palmisano has written, "Although the physician may aspire to give the best care, the law does not require the best," and "The law requires a minimally acceptable level of care, thus my analogy to the 'low hurdle.'"**

- "Mitchell Rabkin, CEO emeritus of the Beth Israel Hospital and CareGroup in Boston, said he objected to Palmisano's 'low hurdle' analogy. 'You practice medicine in order to clear the highest hurdle,' he said, 'and to do it every time.'"
- "John Baldwin, dean of the Dartmouth Medical School, said focusing on malpractice reform will not address fundamental economic problems in the health care system. 'Physicians should be reimbursed based on the quality of outcomes rather than the number of procedures they perform,' he said. 'That would solve most of the malpractice problem.'"

- “Sidney Wolfe, a physician and liberal activist who runs Public Citizen’s Health Research Group, said, ‘Even though you can get away with it in a malpractice suit, it may not be helpful to the patient...The AMA should be promoting excellence in medicine, rather than as little as you can get away with.’”

Ceci Connolly, “AMA Officer Sparks Ethics Debate; Doctor-Lawyer’s Business Advises on How to Avoid Malpractice Suits,” *Washington Post*, June 15, 2002.

**Dr. William M. Sage, professor at Columbia Law School, writes in “Putting the Patient Back in Patient Safety,” in the June 12, 2002, issue of the *AMA Journal*:**

- “...it is likely that most substandard care never results in a lawsuit or a complaint.”
- “...reducing lawsuits requires preventing errors.”

<http://jama.ama-assn.org/issues/v287n22/ffull/jed20027.html>

**Dr. Wayne Cohen, who in 1995 was medical director of Bronx Municipal Hospital, said,** “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.

**In 1985, the director of Maternal/Fetal Medicine at Pasadena’s Huntington Memorial Hospital told the American College of Obstetrics and Gynecology,** “The greatest cause of malpractice is malpractice. You must understand that some of the malpractice out there is so grievous, offensive and implausible as to beggar the imagination.”

Letter from Ralph Nader to Florida Speaker Mills and Senate President Vogt (1988).

## **AND A WORD FROM AN INSURANCE INDUSTRY LOBBYIST ...**

**In a *New York Times* column called “Crushed by My Own Reform,” written on October 7, 1994, Frank Cornelius, former lobbyist with the Insurance Institute of Indiana, wrote,** “In 1989, I underwent routine arthroscopic surgery after injuring my left knee in a fall.” As a result of a series of catastrophic incidents of malpractice, Cornelius continued, “I am confined to a wheelchair and need a respirator to keep breathing. I have not been able to work. I have continuous physical pain in my legs and feet... Twice, I have received last rites from my church. My marriage is ending, and the emotional fallout on our five children has been difficult to witness, to say the least. At the age of 49, I am told that I have less than two years to live.

“In 1975, I helped persuade the Indiana Legislature to pass what was acclaimed as a pioneering reform of the medical malpractice laws: a \$ 500,000 cap on damage awards, and elimination of all damages for pain and suffering. I argued successfully that such limits would reduce health-care costs and encourage physicians to stay in Indiana — the same sort of arguments that now underpin the medical industry’s call for national malpractice reform.

“Today, from my wheelchair, I rue that accomplishment.”