

Medical Malpractice

Medical malpractice is an act or omission by a health care provider which deviates from accepted standards of practice in the medical community and which causes injury to the patient. Since every country in the world operates its own unique legal system, malpractice litigation is different in every country.

United States

In the US, medical malpractice law traditionally has been under the authority of the states, not the federal government, as it is in many other countries. To win compensation, the injured person needs to prove that they received substandard medical care that caused their injury. This must be done within a legally prescribed period, called a “statute of limitation.” Once the injured person has proved negligence that led to injury, the court establishes how much “damages” will be paid in compensation. These take into account both actual economic loss (lost wages and cost of future medical care) and non-economic losses (pain and suffering). Physicians generally must have malpractice insurance to protect themselves and their patients in case of medical negligence and unintentional injury.

United Kingdom

Similar to the United States, the UK relies on the court system to settle patient complaints. 90% of doctors in the UK are insured by the NHS, which handles all the legal and business aspects of medicine. Doctors are not personally liable for malpractice claims, nor must they purchase malpractice insurance on their own. While jury trials are less common in the UK, the legal handling of malpractice claims are much like the US's. Funds for the NHS indemnity come from the government's general fund.

France

Up until 2002, France's malpractice system looked similar to the United States'. Patients brought their cases to court and then either settled or received an award. The two main differences between France and the United States' practices are that first, France had no caps on malpractice awards, and second, there were several rules that made it more difficult for patients to win a case.

However, since 2002 things work differently in France. France has moved to a out-of-court, no-fault system in which wronged patients bring claims before their regions' government-appointed review board which is responsible for determining whether or not compensation is in order, and if so, how much. Money for patient relief comes from a national compensation fund which gets its funds from insurance premiums placed on doctors and hospitals or from general fund revenues.

Germany

In Germany, initial malpractice claims are referred to mediation boards and expert panels set up by the Physicians' guild. Patients may reject the result of mediation and take their case to court, where the system is similar to the United States'.

Sweden, Finland, Denmark and Norway

These Nordic countries operate out-of-court, no-fault systems for medical malpractice. The systems are based on the principle of compensating patients for injuries they suffer from medical care that involved avoidable risk and complications. The systems also compensate patients for injury caused by defective equipment, the misuse of equipment, incorrect diagnoses, and infection contracted during treatment.

Japan

All members of the Japanese Medical Association (JMA) – which accounts for 43.5% of Japan's doctors – have a collective insurance pool. Private doctors and hospital employees can buy insurance through the private market, though it is not required by law. The professional liability program offers an out-of-court review of claims that is faster and less expensive than in-court reviews, but the way is set up is biased in favor of doctors over patients. The review board's decisions are binding, but if the patient is dissatisfied he or she may sue in court.

In Japan, injury or death due to medical error is often treated as a criminal matter – arrests and prosecutorial decisions are based on results of investigations. This is in contrast to the United States, which almost always treats medical errors as a civil matter, not criminal.

Canada

Canada's malpractice system is similar to the UK and the US, except there are far fewer claims filed and more money is paid out in compensation on average than in the US. One reason there are fewer claims filed in Canada can be attributed to the increasing use of alternative, informal interventions that address patient concerns more quickly than the formal system. In Canada, most doctors receive malpractice protection from the Canadian Medical Protective Association.

Sources:

- *Medical Malpractice Law in the United States*. Kaiser Family Foundation. May 2005.
<http://www.kff.org/insurance/loader.cfm?url=/commonspot/security/getfile.cfm&PageID=53241>
- *International Medical Liability Systems – A comparative view*. The Canadian Medical Protective Association. June 2006.
http://www.acpm.ca/cmpapd03/cmpa_docs/english/content/issues/common/pdf/com_medical_liability_a_second_physician_primer-e.pdf
- *Health Spending in the United States and the Rest of the Industrialized World*. The Commonwealth Fund. July 2005.
http://www.commonwealthfund.org/usr_doc/846_anderson_hltspendingUS&world_itl.pdf?section=4039
- *Mythbusters: Medical malpractice lawsuits plague Canada*. Canadian Health Services Research Foundation. March 2006.
http://www.chsrf.ca/mythbusters/html/myth21_e.php
- *Malpractice 'Round the World*. Nick Beaudrot. July 2005.
http://www.prospect.org/csnc/blogs/ezraklein_archive?month=07&year=2005&base_name=malpractice_round_the_world
- "Medical malpractice." Wikipedia, The Free Encyclopedia. 6 May 2008, 00:32 UTC. Wikimedia Foundation, Inc. 7 May 2008
http://en.wikipedia.org/w/index.php?title=Medical_malpractice&oldid=210458501