

Tort Reform

Beyond Legislation to Improved Outcomes

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MOM's* Top Ten

*Myths on Malpractice

1. All tort reform is good.
2. Judges and juries favor plaintiffs.
3. There is nothing I can do.
4. It's the frivolous suits.
5. Only plaintiff's lawyers profit.

MOM's* Top Ten *Myths on Malpractice

6. Lawyers decide the standard.
7. Kill all the lawyers.
8. It's the money.
9. The current system works well.
10. This a new problem.

Dimensions of Malpractice

- **Frequency of suits**
- **Severity of awards**

Direct Costs of Malpractice

- **Insurance premiums**
- **Defensive medicine practices**
- **Physician time in litigation**
- **Medical care costs**

Indirect Costs of Malpractice

- Emotional toll
- Practice changes
- Altered doctor-patient relationship
- Access

Perspectives on Malpractice

- **Doctor**
- **Plaintiff's lawyer**
- **Insurance company**
- **Patient**
- **Public**

Reasons for Perspectives

- Different goals for tort system
- Different epistemology

Solutions

- **Public education**
- **Improved legal defense**
- **Risk management**
- **Tort system changes**

Risk Management

A style of practice to prevent and control: patient injuries, malpractice claims, and malpractice claims losses

Most Frequent Claims

- **Failure/delay in diagnosis**
- **Negligent obstetrical practices**
- **Negligent fracture/trauma care**
- **Failure to timely consult**
- **Negligent drug treatment**
- **Negligent procedure**
- **Failure to obtain informed consent**

Four C's of Risk Management

- **Compassion**
- **Communication**
- **Competence**
- **Charting**

Compassion

- **Dealing with difficult people**
 - ✓ **Check it out**
 - ✓ **Work it out**
- **Misunderstanding**
 - ✓ **Upset over bill**

Communication

- **Healthy team relationships**
 - ✓ **Commit to the team**
 - ✓ **Know what you want**
 - ✓ **Get what you want**

Competence

- **When to consult or refer**
 - ✓ **Nonsurgeon: operation needed**
 - ✓ **Surgeon: nonsurgical problem**
 - ✓ **Slow recovery**
 - ✓ **Patient or relative dissatisfied**

Competence (con't)

- **When to consult or refer**
 - ✓ **Obscure diagnosis**
 - ✓ **Gravely ill or dying patient**
 - ✓ **More knowledge or skill needed**
 - ✓ **Provider lacks privileges**

Charting

- **Timely**
- **Legible**
- **Objective**
- **Relevant**
- **Complete**

Tort Reform That Works

- **Cap on non-economic damages**
- **Reduce statute of limitations**
- **Limit contingency fees**
- **Collateral source rule**
- **Periodic payment**

Tort Reform of Less Certain Value

- **Expert witness limits**
- **Alternative dispute systems**
- **Loser pays**
- **JUAs**
- **Improve MEBs' authority**