

CENTER FOR JUSTICE
& DEMOCRACY
NEWS

Dear Reader,

We are delighted to introduce you to a brand new publication from the Center for Justice & Democracy. *IMPACT* is our new quarterly newsletter. Each issue of *IMPACT* will report on a different civil justice topic or theme. This quarter, our focus is on medical malpractice.

We hope this -- our first issue -- gives you an idea of what's to come when we launch our new membership program in the year 2001. All members of CJ&D will receive this quarterly newsletter free, as well as new CJ&D fact sheets on civil justice issues as part of our basic benefit package. Higher level members will get some terrific additional benefits, including: topical updates, called "Alerts," which contain vital, up to the minute information you need to know; bi-monthly White Papers on a variety of critical topics; and personal correspondence from CJ&D on cutting-edge subjects, analyses of new trends and other exclusive information.

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IN THIS ISSUE: Focus on Medical Malpractice

BAD MEDICINE: GOING FROM BAD TO WORSE

In late 1999, the National Academy of Sciences Institute of Medicine (IOM) published *To Err is Human; Building a Safer Health System*. The study makes some striking findings about the poor safety record of U.S. hospitals due to medical errors. For example:

- Between 44,000 and 98,000 deaths occur each year in U.S. hospitals due to medical errors, the higher figure extrapolated from the 1990 Harvard Medical Practice study of New York hospitals. Even using the lower figure,

more people die due to medical errors than from motor vehicle accidents (43,458), breast cancer (42,297) and AIDS (16,516).

- These figures underestimate the magnitude of the medical malpractice problem, since hospital patients represent only a small percentage of the total population at risk. Not included, for example, are errors at outpatient surgical centers, physician offices or clinics.

- The cost of medical errors is huge. Total national costs

(lost income, lost household production, disability and health care costs) are estimated to be between \$17 billion and \$29 billion each year, of which health care costs represent over one-half.

Following the IOM study, newspapers like the *New York Daily News* and the *Arizona Republic* ran extensive series on the degree and cost of malpractice in their states. But what may seem like a recent epidemic of medical malpractice is, unfortunately,

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PHYSICIAN PROFILES: ARE THE BARRIERS COMING DOWN?

Documenting the degree of medical malpractice in this country is easier than it used to be. In 1997, Massachusetts became the first state to disclose publicly -- via the Internet -- the disciplinary actions taken by Massachusetts against doctors in that state. Since then, medical boards in 41 states have begun putting on their web sites varying amounts of disciplinary information about physicians, chiropractors, osteopaths, podiatrists and dentists.

But do consumers have access to enough information about their health care providers? Ask anyone from Dr. Sidney

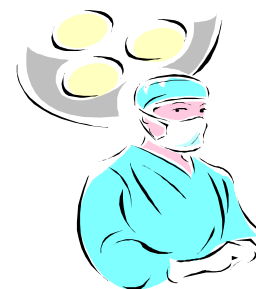
M. Wolfe, head of Public Citizen's Health Research Group, to conservative congressman Tom Bliley (R-Va.), chairman of the U.S. House Commerce Committee, and the answer is a resounding "No."

Bliley recently introduced legislation to open the records of the National Practitioners Data Bank (NPDB), a federal repository for information about disciplinary actions and medical malpractice settlements and judgments against doctors, dentists and other health care providers around the country. Federal law requires that insurance companies, hospitals and state

and federal health care regulators report disciplinary and malpractice information to the NPDB.

However, compliance is voluntary. According to Public Citizen's Health Research Group, which just published the book *20,125 Questionable Doctors*, by early 2000, almost

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We hope you enjoy this issue of *IMPACT*. For more information about our membership program, to find out how you can help CJ&D, or just to let us know what you think of this issue of *IMPACT*, please contact us. We look forward to hearing from you!

Sincerely,

Joanne Doroshov
Executive Director
Center for Justice &
Democracy

"Fighting for the right to trial by jury and an independent judiciary for all Americans."

In the Pursuit of Justice ...

Every lawmaker and journalist in the country should get to know **Thomas A. Moore**. **Moore**, a partner at the New York firm **Kramer Dillof Tessel Duffy & Moore**, is one of the most successful medical malpractice plaintiffs lawyers in the country. But it's not just his extraordinary record -- successful in approximately 90% of his cases, consistently achieving among the top medical malpractice verdicts in the country -- that makes **Tom Moore** worth knowing.

He's someone who contradicts every negative stereotype about trial lawyers that "tort reform" groups have espoused for the last 15 years. In February, *Lawyers Weekly* ran an article by journalist Elaine McArdle entitled, "The Best Med-Mal Lawyer in the Nation? **Tom Moore** has 68 Verdicts of More Than \$1 Million -- Yet Few Have Heard of Him." This headline speaks volumes about who **Tom Moore** is.

Certainly he has had unprecedented success in terms of the size and number of plaintiff verdicts. His skills as an attorney are such that

lawyers line up in standing room only courtrooms to hear him deliver a closing statement. But as McArdle put it, "[M]any plaintiffs lawyers have never heard of him in large part because he isn't much interested in blowing his own horn. He's driven by something much deeper than money or fame... Even defense lawyers describe him as a man on a crusade, fueled not by money or fame but by an unwavering conviction that his clients have been wronged and that he's the only one who can help them."

Moore, who emigrated from Ireland when he was 17 years old, is joined by his wife, **Judith Livingston**, as a partner at **Kramer Dillof Livingston**. **Livingston** is also an extremely successful trial lawyer, having won over two dozen \$1 million verdicts herself.

The firm's expertise and reputation has helped make **Kramer Dillof** one of the most important medical malpractice plaintiffs firms in New York State. The firm's commitment to med mal cases became all the more important in the mid-1980s when draconian tort reforms

were enacted in New York State. The laws, which specifically target medical malpractice lawyers and their clients, make it prohibitively expensive for many New York firms to bring these complex and expensive cases. But **Kramer Dillof** has hung in there. As **Livingston** told *Lawyers Weekly*, "We have a tremendous belief in what we do here, and we know we're good at it."

Like **Moore** and **Livingston**, **James Duffy**, another partner at **Kramer Dillof** and a skilled med mal litigator in his own right, has been supportive of the work of the **Center for Justice & Democracy**. Said **Duffy**, "*The Center for Justice & Democracy is doing tremendous work educating the public about the importance of the civil justice system and the work of trial lawyers. With threats to the civil justice system looming at every turn, we need the Center for Justice & Democracy in the trenches, fighting those who are trying to block injured victims from access to the courts. This truly is an outstanding organization, deserving of our admiration and support.*"

The feeling is mutual.

nothing new. Consider that 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."

This kind of information led *Business Week* magazine to write in its August 3, 1987, issue, "So what can we do? Start by facing up to what the problem is not. It is not a malpractice insurance crisis. Nor, contrary to popular mythology, is the problem a lawsuit crisis. The real crisis is

the degree of malpractice itself."

Despite the amount of medical negligence currently harming patients in this country, very few victims file suit, and those who do often have a very difficult time winning their cases. The Harvard Medical Practice study found that eight times as many patients are injured by medical malpractice as ever file a claim; 16 times as many suffer injuries as receive any compensation. Moreover, defendants now prevail in 76.6% of all medical malpractice trials, according to the Bureau of Justice Statistics and the National Center for State Courts.

The Center for Justice & Democracy believes that

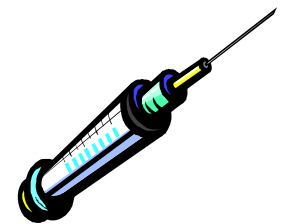
increasing the legal obstacles that sick and injured patients already face pursuing their cases in court are ineffective and unjust reactions to the medical malpractice crisis.

"...some of the malpractice out there is so grievous, offensive and implausible as to beggar the imagination."

Tort restrictions only reduce the financial incentive of institutions like hospitals and

HMOs to operate safely, when our goals should be reducing medical errors – deterring unsafe and substandard medical practices while safeguarding patients' rights.

For more information about any of the studies mentioned in this article, contact Joanne Doroshov at the Center for Justice & Democracy.



Physician Profiles continued

10 years after the NPDB started its operations, 59% of U.S. hospitals - over 4000 hospitals - had still never reported any physicians to the data bank.

Even the details that make it into the data bank, however, are little known. According to current law, this information can be shared only with insurance companies, hospitals and health care regulators -- not consumers. That led Bliley to sponsor the Patient Protection Act of 2000, which would allow public access to at least some of the information. Bliley said at a committee hearing, "[I]t's unconscionable that consumers have more comparative information about the used car they purchase or the snack foods they eat than the doctors in whose care they entrust their health and well-being." It should be no

surprise that the legislation is vigorously opposed by some powerful lobbies, among them the

"...consumers have more information about the.. snack foods they eat than the doctors in whose care they entrust their health and well-being."

American Medical Association, American Hospital Association and American Osteopathic Association.

Yet at the state level, there are problems as well. According

to Public Citizen's Health Research Group, even those states with web site disciplinary records provide, for the most part, an inadequate amount of information. The Health Research Group has graded these sites:

See: <http://www.citizen.org/hrg/publications/1506.htm>.

Alaska, Arkansas, Delaware, Hawaii, Louisiana, Montana, New Mexico, North Dakota, South Dakota and Wyoming provide no information. Three of these -- Alaska, Montana and South Dakota -- do not name disciplined doctors.

Moreover, in its book *20,125 Questionable Doctors*, the Health Research Group found that out of 770,320 licensed medical doctors, the care or conduct of only 2.6% of them was considered substandard enough to be cited by a state

medical disciplinary board, Medicare or the federal Drug Enforcement Administration, or have their eligibility to participate in Food and Drug Administration (FDA) experiments rescinded. And fewer than one-half of 1% face any serious state sanctions each year.

"Too little discipline is still being done," the report said. "2,696 total serious disciplinary actions a year, the number state medical boards took in 1999, is a pittance compared to the volume of injury and death of patients caused by negligence of doctors... Though it has improved during the past 15 years, the nation's system for protecting the public from medical incompetence and malfeasance is still far from adequate."

For more information about *20,125 Questionable Doctors*, see <http://www.questionabledoctors.org/>.