



Women across New York suffer tremendously as a result of medical malpractice.

- Each year approximately 7,000 New Yorkers die as a result of preventable medical error in hospitals, and hundreds of thousands are injured.¹
- In her study of injury cases, Professor Lucinda Finley, the Frank Raichle Professor of Law at the State University of New York at Buffalo Law School, noted, “some types of injuries happen primarily to women - impaired fertility or sexual functioning, miscarriage, incontinence, trauma associated with sexual relationships, scarring or disfigurement in personally sensitive intimate areas of the body.”²

New York fails to discipline or sanction the state’s worst doctors, enabling them to continue to prey upon innocent New Yorkers.

- This crisis of death and injury is caused, in large part, by a small minority of New York’s 80,000 licensed doctors. Just 7% of the state’s doctors account for 68% of the medical malpractice insurance payments in the state (while 82% of doctors have not had to make a single malpractice payment to an injured patient.)³

Laws that restrict patients’ legal rights often discriminate against women and newborns, making them second class citizens in our courts.

- The insurance industry has offered proposals to weaken the legal rights of women and infants by restricting their ability to hold physicians or hospitals accountable for injuries from negligent obstetrical or gynecological care. Such measures target only the legal rights of women – particularly pregnant women – and babies. Adult men have nothing to fear from such legislation – if they are injured by medical malpractice, they would be able to sue their doctor or hospital without any new limits.
- Other proposals would limit only “non-economic” compensation, which have a disproportion impact on lower wage-earners, including some women who work inside the home, children, seniors and the poor. Finley noted, “certain injuries that happen primarily to women are compensated predominantly or almost exclusively through noneconomic loss damages. These injuries include sexual or reproductive harm, pregnancy loss, and sexual assault injuries.”⁴

Laws that restrict legal rights would do nothing to make healthcare for women more available.

- Lobby groups representing obstetricians and gynecologists sometimes argue that New York should enact cruel legislation that would take away the legal rights of women and children. They state that without such laws, OB/GYN’S will leave their practice or the state. This is fiction. New York has the fourth highest number of OB/GYNs per capita in the country and these specialists continue to flood into the state. Physician shortages that exist in some rural areas are longstanding and correlate to stagnating local economies and decreasing populations in those regions, not to lawsuits or the legal system, and are solvable with legislation that provides economic incentives for doctors to practice in these areas.

Restricting the rights of women to sue for injuries will not make medical malpractice insurance more affordable for doctors.

- According to the New York State Department of Insurance, malpractice insurance problems for doctors today are due not to lawsuits and claims, but to “years of artificially low rate increases” combined with appropriation by past administrations of nearly \$1 billion in medical malpractice insurance reserve funds, which were used for general state budget purposes.⁵
- Another major problem is failure by the state health department to discipline or sanction bad doctors who should not be practicing at all, and who contribute to a large portion of medical malpractice injuries and claims.

Solutions.

- Repay the hundreds of millions dollars in malpractice reserve funds stolen by Pataki-era appropriations.
- Discipline bad doctors to prevent the worst practitioners from continuing to prey upon innocent New Yorkers. Consumers and insurers both support comprehensive reform of the doctor discipline system.
- Enact regulatory and legislative changes, such as rating doctors based on their safety track record, to protect consumers and reduce costs for good doctors.

How You Can Help

Join the CURE-NY coalition today to ensure patients’ voices are heard and their rights protected. Email CureNY@gmail.com or call (212) 209-7662.

CURE-NY is a coalition of community groups and consumer advocacy organizations working to reduce the incidence of deaths and injury arising from medical error and to protect the rights of victims of medical negligence.

NOTES

¹ Harvard Medical Practice Study, “Patients, Doctors and Lawyers: Medical Injury, Malpractice Litigation, and Patient Compensation in New York” (1990).

² Lucinda M. Finley, “The 2004 Randolph W. Thorer Symposium: The Future Of Tort Reform: Reforming The Remedy, Re-Balancing The Scales: Article: The Hidden Victims Of Tort Reform: Women, Children, And The Elderly, Emory Law Journal,” 53 Emory L.J. 1263, Summer, 2004.

³ Public Citizen Study, “New York’s Dangerous – and Undisciplined – Doctors” (March 2003).

⁴ Lucinda M. Finley, supra. Non-economic damages compensate injured consumers for intangible but real “quality of life” injuries, like permanent disability, disfigurement, trauma, loss of a limb, blindness or other physical impairment.

⁵ News Release, New York State Insurance Department, “Rate Increase Staves Off Looming Insurance Industry Crisis As New Task Force Confronts Medical Malpractice Reform, July 2, 2007.