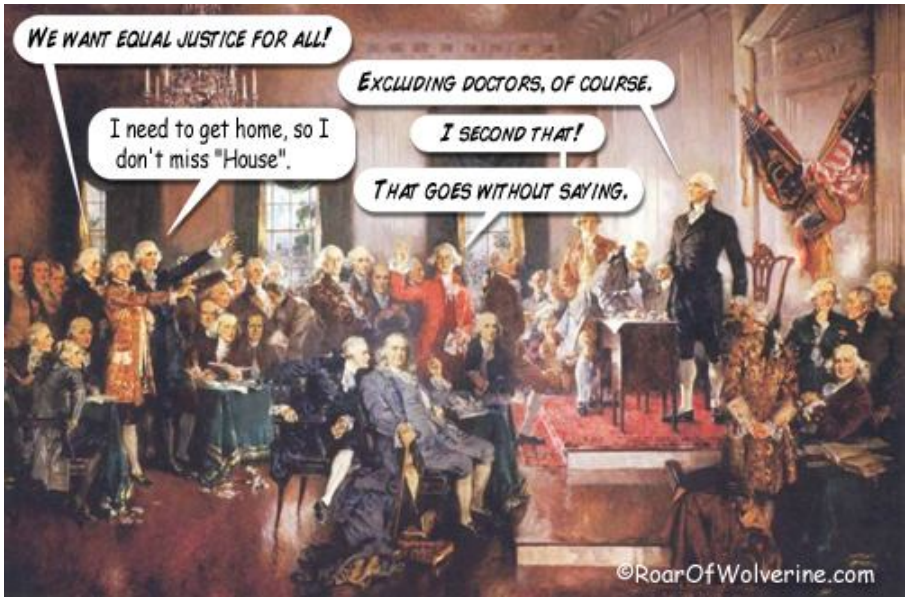
Malpractice Law: Reserved For Only The Frivolous



It was only after I had created the image above that I remembered that George Washington was indeed killed by a doctor's mistake. He was bled to death during the treatment of Bloodletting, which was believed at the time to help balance the body's fluids or "humors" and was about as effective at treating disease as is colonoscopies or many of today's barbaric medical procedures. And just like colonoscopies, it certainly killed more patients than it ever cured. We haven't really come as far from bloodletting as we would like to believe. I'm sure that Martha couldn't sue that quack either. And even though he died unnaturally at the age of 68, he was the youngest death among our first ten presidents. So much for the myth that everyone dropped dead at the age of forty back then.

Most of those that read my story probably assume that I was the beneficiary of a healthy settlement from the quacks that destroyed two-thirds of my digestive system. Yeah, and there is such thing as Santa Clause and the Easter Bunny. There is a better chance that Saint Nick lives and breathes than any

semblance of justice concerning malpractice lawsuits. It was not enough to leave me physically disabled, but financially as well. The doctors who neglected to treat the damage they had done, knew exactly what they were doing legally and made all the right moves to protect their asses. Saving my life or arresting the spread of damage was of little concern to them at that point.

I have very little background or understanding when it applies to law. The law is a creation of lawyers (most politicians and lawmakers are attorneys) and therefore was made unnecessarily complicated, so no one could understand it but lawyers. That's not to say that they are intelligently written, but just made as confusion as possible. But when the law lacks any continuity, even a novice, such as myself, can clearly see that it is misguided. Laws are kept simple only when justice is the goal and are only made complex when special interests are its main objective. Our founders (mostly made up of non-lawyers) authored a five-page document that would set forth the foundation with which to build one of the greatest nations on earth, yet lawyers have turned those five pages into volumes of conflicting ideas, so misconstrued, that not only would the founders no longer recognize them, even the lawyers can no longer understand them. Had John Adams (a lawyer) framed the constitution, rather than James Madison, we probably would have begun with the clusterfuck that is our present legal system and dissolved into a another unsuccessful governmental experiment a long time ago.

When individual states began to enact tort reform to reduce the level of frivolous law suits, they were not actually swept broadly across the board, but medical professionals seemed to be the highest beneficiaries of this protection. I am not sure why medical practitioners and hospitals were afforded a greater protection under the law than any other citizen of this nation. I believe it was based on a misguided belief that this would somehow lower the cost of health care – how's

that working out for us so far? The costs of health care are higher than ever before.

There certainly were a multitude of abuses in the U.S. legal system which incited a rash of frivolous lawsuits. As is true with all federal and state laws, when the scales of justice bottoms out on the one side, the knee-jerk reaction of lawmakers is to pen a law that overcompensate, thereby bottoming out the opposing side. Government can never seem to get the scales of justice to balance. It always has to be one extreme or the other.

Tort reform laws did little to fix the problem and may have, in fact, made them worse or at least skewed in the wrong direction. The playing field was not leveled, but certainly slanted in favor of medical professionals (and their insurers). I will agree that prior to reform laws, lawyers and civilians both muddied up the court system with ridiculously inflated suits and many of them were targeted at the medical profession. There arose a "Lottery Mentality" towards the medical profession and people began to see it as a way to make a quick windfall, rather than compensation that fit the damages. This required practitioners to carry insurmountable amounts of malpractice insurance. We all understand that there are inherent risks associated with medical practices and all of these frivolous suits were inflating the cost of health care. But, instead of looking at each case on an individual basis and adjusting damages accordingly, government did what is always does and simply threw a blanket of protection over the medical practitioners by setting caps on damages and shortening the statute of limitation for filing an action against a doctor or hospital – giving them virtual impunity from any large-scale or "catastrophic" lawsuits.

Most states cut the statute of limitations on filing a malpractice suit to two years. Even a "fender-bender" automobile accident has a seven-year statute. This statue

actually becomes less than 18 months, because most attorneys will not consider filing a malpractice claim if there is not six to seven months to prepare the case before filing. The scare tactic was pushed even further by the threat of taking away their license to practice law, if the case is determined to be frivolous and this could simply include being beyond the statute of limitations. In other words, a malpractice case could be well prepared and completely justified – a slam dunk case if you will, but unfortunately be beyond the statute of limitation and the lawyer could lose his license to practice. I really don't believe that is so strictly enforced in other types of lawsuits. A very good essay on the statute of limitations concerning malpractice can be read here. This was written by a lawyer and gives some good examples of how good cases are thrown out, while bogus cases are let through the system.

Medical injustices can slip through this crack in two ways. In many cases, the mistake could take more than six months to a year to become apparent. In other cases (such as mine), the damage is so catastrophic that it is inconceivable that the patient could seek counsel when they spend months or years hospitalized and fighting for their life. So in the practitioner's world, the more catastrophic the damages of their mistake is, the better the chance that they will avert a large-scale lawsuit.

I can see why the lawmakers and attorneys have a difficult time empathizing with regular people, who actually would place the life of their loved ones above money, because filing a lawsuit would be the first order of business for the attorney, even while their child was dying. This is referred to as the "False-Consensus Effect" and why lawyers can feel that these laws are just. But not everyone could ignore the needs of a beloved family member in pursuit of money, especially when they have no reason to expect that there was a malpractice at the time. This would require that every person be both greedy

and cynical, in other words; a lawyer. I have no problem believing that a lawyer would go for the money first, but the laws should be written for everyone, not just lawyers.

In a time of crisis, there is a great amount of confusion and stress on all those involved. For the law to expect the common individual to have both the medical and legal knowledge, and clarity of thought in the midst of a catastrophe is sheer science fiction. But the False-Consensus Effect has allowed lawmakers not to weigh in the stress factor and lack of medical knowledge. Most people will believe what the doctors tell them at the time and only find out much later when doctors lied to them. Doctors are human beings and have been known to lie – especially to cover their ass.

Any patient who has been damaged by a doctor will need another doctor to treat or fix the problem created by the first doctor (only an insane person would allow the doctor that screwed them up to attempt to fix them). If that treatment requires an elective procedure, such as a transplant, the fact that they are involved in an action against another doctor could influence the decision as to whether they are accepted into the program. This could obviously become a deterrent to any doctors considering an elected and risky procedure, if they believe the patient is “sue happy”. If lawyers are buzzing in and out of their hospital room, it’s going to be difficult to hide the fact that they are seeking litigation. A patient should be allotted the time to become physically stable and out of critical condition before the clock begins to tick, but this is not the case.

Just to make it look reasonable, the lawmakers added a provision that allows the two-year clock to begin ticking from the time that the patient “discovers” that there has been a malpractice, but this rarely happens because the court will determine when that time of discovery SHOULD HAVE occurred, based on what they will deem to be “due diligence” and not the

actual time discovery did occur. So the court will determine that a patient, flat on their back in the ICU and heavily sedated and being lied to by doctors, was supposed to realize what mistakes were made and conduct a full investigation – if they were being diligent. It's all quite ridiculous and apparently designed to reduce the amount of cases brought forth.

Unfortunately, it only reduces the amount of serious cases from ever seeing the light of day and does little to reduce the smaller, less significant cases which are usually highly inflated in proportion to the amount of damage. The government is only seeking a total reduction in the amount of damages awarded, not a reduction in the amount of cases. It is not about justice, but lowering the overall totals in money awarded, and what better way than to completely rid the system of the lawsuits that could be awarded millions and only allow the cosmetic damages, which will be awarded smaller damages and will most likely settle our of court.

So the way it is now, the person who is injured the least by a doctor has the greater chance of collecting damages. Seems ass-backwards to me. But this brings me to the second blunder – federal caps on the amount of damages awarded. This again creates an unfair advantage to the lesser injured patient and perpetuates small insignificant suits and deters the larger complaints, where insurmountable damage was done. The maximum damages allowed by the federal government in a malpractice is $350,000.00 and in rare cases, one million if the damage is deemed to be catastrophic. A million dollars will rarely cover the medical costs in truly catastrophic cases. My transplant alone was over a million dollars and that doesn't include the seven months of hospitalization that followed, nor the six months that preceded, nor the expensive medication and medical treatment I will need the remainder of my life.

So if a dentist misreads an x-ray and pulls the teeth on the wrong side of someone's face, they can sue the doctor for the

same $350,000.00 as someone whose liver was destroyed by a malpractice and has to undergo a liver transplant. Which one would be more motivated to file a lawsuit? Which one would attract an attorney to take the case? The liver patient would have less to gain, because certainly the transplant exceeded the damages they will be awarded and if Medicare or Medicaid paid for the transplant, the government can place a lien on the damages awarded to collect the money spent. The dental victim will not make a dent in his awarded largesse when purchasing a partial plate to fill the missing gap in their smile. This creates an unfair bias towards the smaller claims and they, and their lawyers, can actually profit from the doctor's mistake. This would seem to promote many insignificant lawsuits, not prevent them. Lawyers are eager to take the cases with smaller amounts of damages and outright reject the cases where tremendous damage was committed. Their 33 1/3% is only based on the net gain from the awarded money, so if the medical bills are extremely high, their cut will be far too small, based on the federal caps. Lawyers are not interested in justice – just money.

A person who is significantly injured or disabled will never see any of the money from the damages awarded, even if successful. By the time the attorneys take 33 1/3% and all court cost are settled, then they can have a lien applied by their insurance provider to recoup past medical expenses, plus any future medical expenses. A million dollars just does not stretch that far, given today's medical costs. Attorneys will not take these type catastrophic cases and prefer to defend the smaller cases that are more likely to settle out of court and reap a much higher profit after medical debts are settled. If the caps on the catastrophic cases were more realistic and based on present day medical prices (rather than 1970), then attorneys would be more willing to take these cases, because their cut could be substantial and well worth the effort.

You may have seen commercials advertising that an attorney has

defended cases where millions were awarded in medical lawsuits. These are concerning medical products and pharmaceuticals. If you are damaged by a faulty piece of medical equipment, implants or drugs, the sky is the limit on the damages that can be sought. This is why lawyers prefer those cases, which often become "class action" and make a wealth of money for the attorney when they receive over 33% of the damages from everyone involved in the suit, which can number in the hundreds or even thousands. The extreme limits are only placed on damages committed by doctors and hospitals. Why should there be a difference? It's kind of like "Hate Crimes". What can make the damages worse just because those involved were of a different race or sexual preference? In the same way, how can the damage done by a doctor be any less than one from a corporation?

Had the loss of my organs been the result of a drug or a faulty equipment, attorneys would have flocked on me like vultures on a two-day old roadkill. Yet, damage from a drug or product could well have been accidental or misuse of the product. What happened to me was no accident. The doctors refused to take any action for more than three days, making the amount of tissue damaged far greater. Had they moved right away, I would have only lost a few inches of colon. Even had I lost the entire colon, it would not be life-threatening and would not have required an expensive transplant. Humans can live without a colon. Because the infection was allowed to spread to the small intestines (a vital organ), all of my intestines had to be removed, leaving me in a condition where I was dependent on life support systems to stay alive. Then the surgeon that finally operated, left necrotic tissue inside of me, nearly costing me my life and requiring another near fatal surgery only five days after the first. We later discovered that this surgeon had a past record of multiple malpractice suits and had lost his license in another state and yet was allowed to practice at this hospital. Furthermore, he has since been removed from

that hospital for a well-known alcohol abuse problem. I will cover this in more detail in my upcoming post "Is Your Surgeon Licensed? Are You Sure?".

Even with all of that, no attorney would even consider the case. Not because no wrong was committed – every lawyer confessed that it was gross negligence, but admitted that they simply were not a big enough firm to take on such a case, because the government has made catastrophic cases much more expensive to take to litigation. When I asked what type of cases they had successfully defended, their examples were all very petty lawsuits that caused more of a minor inconvenience in the victim's life, rather than any type of seriously life-altering damages like I have seen. The greater majority of all of the transplant recipients that I encountered at Jackson Memorial were the result of medical mistakes, rather than from disease. The most catastrophic example a lawyer could give me was the case of a woman who developed dropsy in her left leg from the failure of a nurse to reposition the leg. Because the damage was the fault of a nurse, he was able to sue the hospital.

Attorneys are far more interested in filing a case against a hospital than a doctor. You cannot sue a hospital for a malpractice committed by a doctor, even if that doctor damaged you in the hospital. The doctor is not considered an employee of the hospital, but rather a contractor. This again is unique in the business world. I have often contracted to companies like Disney, Viacom and Universal and if someone gets injured by one of my works, they will sue Disney, who will then sue me. Disney cannot simply waive their responsibility and pass the buck straight on to me, but according to our present laws, a hospital can.

Because of these laws, many doctors today are refusing to carry malpractice insurance at all. I encountered a few doctors who offered a paper to be signed that stated that I understood that the doctor was not insured for malpractice and

waived any right to bring an action against them if mistreated. This further gives no incentive for an attorney to take a case against them. Many of the doctors and hospitals that still carry malpractice insurance have lowered their amount of liability as a result of the obvious protection they feel under the new laws. Most of the doctors that I was treated by carry only $100,000.00 liability for malpractice. I am a contract artist and I am required to carry a general liability of 3 million to sell services to theme attractions. How much damage can my artwork inflict compared to a surgeon? Yet, they're required to carry less insurance than an artist. It's insane.

You will never get an attorney interested in taking a catastrophic case against a doctor who is only insured for $100,000.00. It will cost half of that just to bring the case to court! Malpractice cases are some of the most expensive to bring to trial and you can bet your ass that's by design. This does not even address the politics involved. Malpractice lawsuits require that several other doctors testify that the doctor in question did in fact screw up and that's not very easy. Given the fact that the AMA frowns on doctors who criticize other doctors – not to mention their other peers – few doctors will point the finger of blame at another. So, the mistakes have to be very blatant, like sewing their wristwatch into a patient. Negligence is absolutely impossible to prove based on the testimony of another doctor. But if you are injured by a nurse or other hospital employee, doctors have little problem passing blame to nurses, so you will get a quick out of court settlement.

Malpractice lawsuits are the most costly actions to bring to litigation. Few victims of a medical accident, especially being put out of their livelihood and bearing tremendous medical bills, can afford the filing fees and associated costs of bringing an action against a doctor. Most people injured in a malpractice would depend on an attorney taking a case Pro

Bono for any likelihood of seeking justice. Yet, every attorney knows that a huge sum of their money will be tied up for years into filing a case that has a very low percentage of seeing victory, because juries will more often side with the doctors. We are, after all, a doctors worshiping society.

Two different attorneys flat-out told me that they had lost malpractice cases that were so successfully executed that the doctors admitted to the court that they had made a mistake, but apologized and claimed they had learned their lesson and the jury ruled in favor of the doctor. They also admitted that this was unique to malpractice cases. No CEO of a multi-national corporation has ever stood up and admitted that their product injured or killed someone, but they had learned their lesson and won't do it again and were let off the hook. Do you believe that the CEOs of Philip Morris or R.J. Reynolds would be extended such grace with a simple oral statement of contrition? Somehow doctors are granted immunity from the same corruption as businessmen – even though doctors are some of the most ruthless businessmen.

One of my clients is a venture capitalist, who assembles syndicates of investors for projects, including theme attractions here in Orlando. He often contracted me to do design work on the theme attractions. He and his wife (a law partner in his investment firm) once told me that they are now reluctant to allow doctors to invest. They both swore that the doctors were not only the most greedy, but having the least experience at finance, they were more preoccupied and nervous about their investments than the other entrepreneurs. His wife claimed that the doctors would call the most often to check on their investments and that a couple of the surgeons actually called during surgery to check on their money. So your surgeon may be getting an update on his portfolio while he is operating on you, but doctors are much better people, by nature, than the rest of us dregs.

Is it any wonder why medical errors are the second highest

killer of humans in the U.S. with this kind of impunity awarded to doctors? Is there some sort of magical enchantment at medical school graduation that enables every doctor to be excellent at their job? Can no one conceive of a reality where maybe some doctors chose the wrong career and are just not very good doctors? Some even have drug and alcohol abuse problem. I guess because some fictitious character like Gregory House can be a flawless doctor and a strung-out hydrocodone addict has convinced a gullible public that doctors are beyond mortal.

If you are the type of juror who would let a doctor out of their financial obligation for horrible damages inflicted on a patient, just because they apologize, it would be poetic justice that you are the next victim of a surgeon who decides to finish his weekend golf game or check on his investments before responding to an emergency page for your surgery. It's not like they're going to go to prison and if it eventually cost them their career from multiple lawsuits, then so be it. That's how the filtration system works to get rid of bad practitioners – and believe it or not, there are bad practitioners. Have people gone completely bat-shit crazy!?

If you have read my post; "How Common Are Medical Errors?", you get an idea of how many mistakes were made during my stay in the hospitals. These were truly mistakes and though a few of them nearly cost me my life, I would never consider seeking damages for them – because they were accidents. The doctors that treated me immediately following the perforation knowingly ignored my complaint. They were extremely cynical and unable to accept the fact they had made a mistake and tried to cover it up. They were hoping that if they ignored the perforation, it would heal itself (they often do) and no one would be the wiser. The perforation was an accident and had they rushed to action, I would have no reason to have a problem with them. But their neglect was near criminal and caused a far greater loss of organ tissue.

The doctors kept me sedated for those three days, so I was unconscious and not aware how much time had passed before I had surgery. To then add insult to injury, the doctors lied and told me that I had lost my organs to Crohn's Disease (this is written in all of their records). It was not until my transplant, seven months later, that I was told by the surgeons in Miami that I never had Crohn's Disease. The transplant doctors were even mislead by the previous doctors that I suffered from Crohn's, because that is what they had reported. Yet, every test ran in Miami came back negative for Crohn's based on the pathologies of the remaining tissue. The diagnosis of Crohn's was very unlikely given my age and prior history, but I did not know that at that time. Crohn's typically onsets at a much younger age (15-30) and I was over 48, with no prior history of gastric problems. There was also the fact that I had been a former smoker and tobacco use worsens the symptoms of Crohn's, so it would have been impossible for a Crohn's sufferer to live 48 years, as a former smoker, and show no signs of the disease. So not only was the diagnosis for Crohn's Disease an example of bad doctoring, but a complete fraud in order to cover for their negligence.

If you are a patient suffering a catastrophic injury from a malpractice, all the odds are stacked against you ever getting a day in court, much less being awarded any damages. The more catastrophic the injury and the longer you are laid up in the hospital, the higher the chance that the clock will run out on you. The doctors can and will lie to stall your discovery of their error, knowing that the clock is ticking away every minute you accept their lies. It is completely ridiculous that the law would expect that a legal action should be the priority of a patient struggling to survive and if it's not their top priority, then their case should have no merit. Of course someone with a minor injury will place a lawsuit on the top of their to-do list, which is why I believe that the present tort reform laws favor the smaller, less significant

cases and discriminate against the truly life-altering and crippling wrongs committed by medical professionals.

It would seem unconstitutional to award one group of citizens a different set of rules than any others. How can a system be just that awards special privileges and protection to one group of citizens? No one is so morally superior because of a particular degree of education to be awarded freedom from the justice system and can be policed by their own moral compass. I believe the record speaks for itself. Because of their legal impunity, the medical profession have become the highest error-ridden profession. This would happen to any industry if they were given the same protection under the law. Given the supreme money generating ability of the medical system, $350,000.00 caps are not even a slap on the wrist. If the laws are not constructed in a way that allows a hard smack on the ass to doctors and hospitals that intentionally neglect patients and hire medical personnel that have proven not to be qualified at their job, we will continue to see the medical system decay even further. It is already the single highest killer of humans in the United States and has no incentive to clean up its act.

The United States is not the best health care system in the world (far from it) and yet it should be, because we spend more on health care than any other nation. People need to quit simply saying we're #1 – we aren't. Wishful thinking is not going to make it the best and helping to sweep all of the mistakes under the carpet may give the illusion that our medical system is better than it truly is, but how's that going to help you when you end up needing their services?

The only way that this system will improve is the same way that every other business does – by making them accountable for their mistakes – especially the big ones. If all malpractice lawsuits were allowed to truly reflect the damage inflicted, we would see less of the frivolous lawsuits and the lawsuits where multi-million dollars worth of damages were

committed would be allowed a day in court. The media would find those large-scale cases sexy enough to cover and everyone would soon be aware of just how fucked up and dangerous our medical system truly is. That would actually be good for the patients, because there would be an outcry and changes would finally be made. Until then, I hope you don't end up in a U.S. hospital and certainly don't expect to get any compensation if you are disabled by a doctor.

Had there been any justice in our system, I would only have to bear the physical stress of what the doctors reaped upon me. Unfortunately, I also must endure the financial stress these doctors caused, which is often greater than the injuries and pain I still suffer. The only advice I get from attorneys is; "Wow, that was really horrible what happened to you. It really sucks to be you!". Meanwhile, those doctors who cost me my intestines will tee-off at their private country club comfortable in the fact that they did everything right to cover their ass, even if it cost me my life. Yet, everyone will continue to believe that they are morally superior to the rest of us, because after all, they chose to become a doctor, not for the money, but because they wanted to help people. I wonder how many of them would still be in medicine if it paid an average wage?