

## Introduction: Starting Over: Redesigning the Medical Malpractice System - Tenth Annual Clifford Symposium on Tort Law and Social Policy

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## INTRODUCTION

*Stephan Landsman\**

A debate now rages across America about what should be done to improve the way we respond to injuries suffered during medical treatment. Some champion continued reliance on the civil justice system and the tort law developed to address medical malpractice. Others challenge that system and argue for one or another reform approach. At the instance of the President of the United States, among others, the issue has become highly politicized and is presently being debated in Congress as well as elsewhere. The Tenth Annual Clifford Symposium examines the issue of medical malpractice reform. Its main purpose is to ask: Should we be starting over?

If we decide that we do need to start over, a host of further questions arise. One of the most important is what type of approach to use in place of the current medical malpractice system. The first five of our articles discuss that question.<sup>1</sup> Proposals they consider include legislative guidelines for the awarding of damages for malpractice-related injuries, collateral payment offsets from awards, enterprise rather than individual liability, no fault compensation schemes, early settlement offers by defendants of net economic loss, state-operated compensation funds, mandatory arbitration, caps on damage awards, and private market contract remedies.

The discussion of alternatives is followed by a group of three articles and one comment exploring the impact of malpractice issues on a number of different participants in the health care process.<sup>2</sup> These include doctors and patients as they relate to one another, insurance

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1. See Paul C. Weiler, *Reforming Medical Malpractice in a Radically Moderate—and Ethical—Fashion*, 54 DEPAUL L. REV. 205 (2005); Jeffrey O'Connell & Evan Stephenson, *Binding Statutory Early Offers by Defendants, Not Plaintiffs, In Personal Injury Suits*, 54 DEPAUL L. REV. 233 (2005); Frank A. Sloan et al., *Public Medical Malpractice Insurance: An Analysis of State-Operated Patient Compensation Funds*, 54 DEPAUL L. REV. 247 (2005); Michael J. Saks et al., *A Multiattribute Utility Analysis of Legal System Response to Medical Injuries*, 54 DEPAUL L. REV. 277 (2005); Richard Epstein, *Contractual Principle Versus Legislative Fixes: Coming to Closure on the Unending Travails of Medical Malpractice*, 54 DEPAUL L. REV. 503 (2005).

2. See Mark A. Hall, *Can You Trust a Doctor You Can't Sue?*, 54 DEPAUL L. REV. 303 (2005); Neil Vidmar et al., *Uncovering the "Invisible" Profile of Medical Malpractice Litigation: Insights from Florida*, 54 DEPAUL L. REV. 315 (2005); Lori Andrews, *Studying Medical Error In Situ*:

companies as they grapple with claiming patterns, and a major teaching hospital as it struggles to come to grips with the serious challenge of medical error.

The Symposium then turns to a closer look at the insurance industry. Two articles and a comment explore questions posed by the interactions between insurance companies, doctors, and the malpractice adjudication system.<sup>3</sup> The articles provide detailed analysis of questions raised by the underwriting cycle, by the size and distribution of insurance premiums within the medical profession, and by reliance on outdated notions about the business of medicine and its costs.

The collection concludes with a paper considering innovative medical practices that, through redesign of the system for the delivery of health care services, may help foster a culture of safety that shrinks the risk of patient injury.<sup>4</sup>

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*Implications for Malpractice Law and Policy*, 54 DEPAUL L. REV. 357 (2005); Robert L. Rabin, *Three Perspectives on Medical Injury: A Commentary*, 54 DEPAUL L. REV. 527 (2005).

3. See Tom Baker, *Medical Malpractice and the Insurance Underwriting Cycle*, 54 DEPAUL L. REV. 393 (2005); Mark Geistfeld, *Malpractice Insurance and the (Il)Legitimate Interests of the Medical Profession in Tort Reform*, 54 DEPAUL L. REV. 439 (2005); William M. Sage, *Medical Malpractice Insurance and the Emperor's Clothes*, 54 DEPAUL L. REV. 463 (2005).

4. See David D. Woods, *Conflicts Between Learning and Accountability in Patient Safety*, 54 DEPAUL L. REV. 485 (2005).