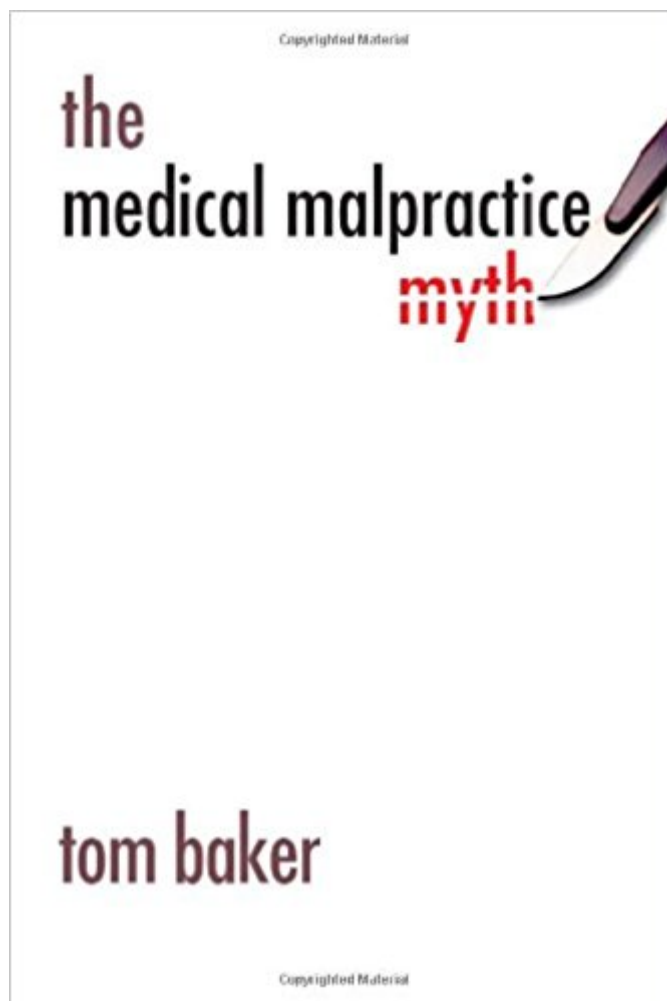


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# The Medical Malpractice Myth



## Synopsis

American health care is in crisis because of exploding medical malpractice litigation. Insurance premiums for doctors and malpractice lawsuits are skyrocketing, rendering doctors both afraid and unable to afford to practice medicine. Undeserving victims sue at the drop of a hat, egged on by greedy lawyers, and receive eye-popping awards that insurance companies, hospitals, and doctors themselves struggle to pay. The plaintiffs and lawyers always win; doctors, and the nonlitigious, always lose; and affordable health care is the real victim. This, according to Tom Baker, is the myth of the medical malpractice, and as a reality check he offers *The Medical Malpractice Myth*, a stunning dismantling of this familiar, but inaccurate, picture of the health care industry. Are there too many medical malpractice suits? No, according to Baker; there is actually too much medical malpractice, with only a fraction of the cases ever seeing the inside of a courtroom. Is too much litigation to blame for the malpractice insurance crisis? No, for that we can look to financial trends and competitive behavior in the insurance industry. Point by point, Baker—a leading authority on insurance and law—pulls together the research that demolishes the myths that have taken hold and suggests a series of legal reforms that would help doctors manage malpractice insurance while also improving patient safety and medical accountability. *The Medical Malpractice Myth* is a book aimed squarely at general readers but with radical conclusions that speak to the highest level of domestic policymaking.

## Book Information

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## Customer Reviews

In January 2005, President Bush declared the medical malpractice liability system "out of control."

The president's speech was merely an echo of what doctors and politicians (mostly Republicans) have been saying for years—that medical malpractice premiums are skyrocketing due to an explosion in malpractice litigation. Along comes Baker, director of the Insurance Law Center at the University of Connecticut School of Law, to puncture "the medical malpractice myth" with a talent for reasoned argument and incisiveness. He counters that the real problem is "too much medical malpractice, not too much litigation," and that the cost of malpractice is lost lives and the "pain and suffering of tens of thousands of people every year"—most of whom do not sue. Baker argues that the rise in medical premiums has more to do with economic cycles and the competitive nature of the insurance industry than runaway juries. Finally, Baker offers an alternative in the form of evidence-based medical liability reform that seeks to decrease the incidence of malpractice and also protect doctors from rising premium costs. Having worked with insurance companies, law firms and doctors, Baker brings experience and perspective to his book, which is sure to be important and controversial in future debates. (Nov.) Copyright © Reed Business Information, a division of Reed Elsevier Inc. All rights reserved. --This text refers to an alternate Paperback edition.

"The best attempt to synthesize the academic literature on medical malpractice is Tom Baker's *The Medical Malpractice Myth*.... [Baker] argues that the hype about medical malpractice suits is 'urban legend mixed with the occasional true story, supported by selective references to academic studies.'... If anything, there are fewer lawsuits than would be expected, and far more injuries than we usually imagine." - Slate"

This book is a must read for anyone who thinks that tort reform is a good idea. We've tried it in California. The effect has been to effectively immunize health care providers from liability by closing the courthouse door to claims of medical negligence. There is no incentive to improve the health care system or to address the systemic problems that cause most injuries and deaths. Medical negligence is a fact. Our government estimates that as many as 98,000 people per year die from preventable medical errors. The cost of these errors is enormous and, when our civil justice system is crippled by tort reform, those costs are often shouldered by the public through increased taxes and fees. Tort law is designed to do two things: to provide just and reasonable compensation to people injured by the negligence or carelessness of another and to discourage behavior likely to result in injury. When we "dis-incentivize" good medical practices by immunizing health care providers, we make it more, not less, likely that people will be injured as a result of medical errors. There is no evidence of which I am aware that these reforms have benefitted anyone other

than big insurance companies. In California, it is increasingly difficult or impossible for patients who are injured by medical errors to receive "just and reasonable" compensation for the harm caused. The cost of litigating such cases is prohibitive in light of the 32-year-old MICRA cap which limits damages to \$250,000 in most cases - even those involving gross negligence or the death of a child.

This book will displease a lot of physicians who have been brainwashed to think that the answers to their malpractice problems are tort reform and blaming the victims. Baker compiles an impressive bibliography of articles, reports and controlled studies to back up his assertions. He writes the truth and should be taken seriously by physicians, insurers and politicians -- many of whom are completely ignorant about the real causes and prevention of medical injuries and malpractice claims.

If Tom Baker came into my Emergency Department as a patient, he would almost certainly get MORE care (studies, procedures, consultations), but there is a very good chance that it would be worse for his health. However it would not be from malicious or punitive intent. Like nearly all outsiders, and unfortunately most physicians, Baker underestimates the impact of doing more medicine in order to be more careful. A fantastic literature is now emerging exploring the problem of overzealous medical care. See Shannon Brownlee's "Overtreated," Gilbert Welch's "Overdiagnosed," or the really superb "Hippocrates Shadow" by David Newman. It is the effect of the confluence of money, technology, consumers' expectation of immediate and complete satisfaction, and physicians' overconfidence in the salvific power of our craft. The problem is that despite the enormous contributions of technology, medical diagnosis is not nearly accurate enough, and as a result there will be increased cost in terms of risk (I'm not talking about money here) to pursuing earlier diagnosis. This has to do with the basic statistical notion of the FALSE POSITIVE. When diagnostic tests are less than 100% accurate then they will occasionally yield false results - this is obvious. What is not obvious is the paradoxical effect of applying imperfect tests to low-risk populations. When I have a test that is "only" 99% accurate, and I apply it to a patient group that has a 1% chance of having the condition in question, fully ONE HALF of those who have a positive test result will be FALSE POSITIVE. If the previous factual statistical statement doesn't cause you some psychic distress, then keep reading it until you begin to understand the implications. Most of the conditions that we in Emergency Medicine are interested in diagnosing are low-likelihood. Only about 5% of my chest pain patients are having a heart attack. Only about 3% of my trauma patients with neck pain have a neck fracture. Fewer than 1 in a thousand of my abdominal pain patients has

the emergency aortic condition that killed John Ritter. When you cross a certain threshold, "being more careful" means creating more "false positive" than "true positive" diagnoses for my patients. I'm in my 12th year as a full-time board certified ER physician working at a large tertiary center helping to train the next generation of physicians. I can tell you, in the culture of modern American medicine, the pendulum has swung too far toward over-diagnosis. I truly fear that Baker's solution - more malpractice lawsuits to browbeat us into doing better will only succeed in causing us to do more ... harm that is.

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