



# Justice In Crisis:

*Victim Access to the American  
Medical Liability System*

Professor Joanna M. Shepherd-Bailey, Ph. D.  
*Emory University School of Law*



# Access to Justice

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- *Most attorneys reject over 90% of the cases they screen*
- *Why?*
  - ⑨ *Unlikely to win*
  - ⑨ *Not economically feasible*
    - *High litigation costs*
    - *Tort reform that reduces damages*

# Medical Malpractice Litigation Costs

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- *The cost of prosecuting a single case of medical malpractice ranges from a low of \$50,000 to a high of \$500,000:*

***“every case require[s] hundreds of hours of work and a huge outlay of money to pay for the investigation, evaluation by experts, deposition testimony, travel, etc.”***

# Medical Malpractice Litigation Costs

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Consider:

- *Attorney with 33% contingency fee*
- *Expected litigation costs are \$100,000*
- *Breaks even if damages are \$300,000*

# Medical Malpractice Litigation Costs

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- *“med-mal litigation is the ‘sport of kings’ from an expense standpoint...the liability/damages mix must present sufficient strength in both measures to make economic sense.”*
- *“the cake has to be worth the candle...I know if expenses will be high, I won’t take the case without the likelihood of a large recovery.”*

# Damage Caps

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Consider:

- *expected economic damages of \$50,000*
- *noneconomic damages of \$500,000.*
- *Attorney with a 33% contingency fee earns \$181,500 (33% of \$550,000).*
- *if the state enacts a \$250,000 cap on noneconomic damages*
- *Attorney with a 33% contingency fee earns \$100,000 (33% of \$300,000)*

# Damage Caps

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- *“Because if it’s a case that’s gonna hafta be tried, and the up-end is \$200,000 to \$250,000, which is a \$100,000 fee, we’re not gonna risk \$100,000 to get a \$100,000 fee. You can’t do that in this business if you expect to be around very long.”*



# Disproportionate Impact across Demographic Groups

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- *Because some groups tend to have disproportionately lower economic damages, they find it even more difficult to find legal representation*
- *females, children, the elderly, demographic minorities, and the poor*
- *Tort reforms exacerbate this disproportionate access to justice*

# Disproportionate Impact across Demographic Groups

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- *“Tort reform has “essentially closed the courthouse door to the negligence that would kill a child, a housewife or an elderly person. [The reason is that] there are no medical expenses, no loss of earning capacity”*

# Access to Justice Survey

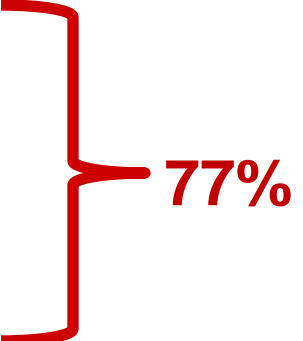
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- *35-item online survey*
- *464 responses*
- ***259 plaintiffs' attorneys; 205 defense attorneys***
- *39 states*
- *Nationally representative in terms of office location, firm size, experience in med mal cases, case disposition*

# Approximately what percentage of the cases that you screened did you reject?

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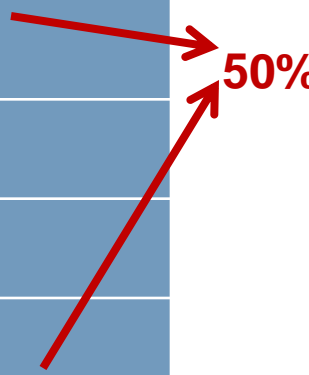
<i>Percent of Screened Cases that are Rejected</i>	<i>Percent of Respondents</i>
<i>less than 75 %</i>	5.21%
<i>75% to 89%</i>	18.01%
<i>90% to 94%</i>	25.59%
<i>95% to 99%</i>	42.18%
<i>more than 99%</i>	9.00%



**77%**

# Which of the following was your primary reason for rejecting the cases that you did last year?

<i>Reason for rejecting case</i>	<i>Percent of Respondents</i>
<i>Insufficient damages expected from trial or settlement</i>	38.73%
<i>Unclear evidence of malpractice</i>	29.11%
<i>Unclear causation</i>	19.25%
<i>Complexity and expense of bringing the claim</i>	11.74%
<i>Case is unlikely to settle</i>	0.94%
<i>Hospital not involved in malpractice</i>	0.23%



# What is your minimum threshold for the potential damages award, below which you will not accept a case?

<i>Damages Threshold below which will not accept case</i>	<i>Percent of Respondents when likelihood of winning on the merits is</i> <b>51%</b>
<i>less than \$50,000</i>	0.78%
<i>\$50,000 to \$149,000</i>	3.10%
<i>\$150,000 to \$249,000</i>	7.75%
<i>\$250,000 to \$499,000</i>	17.83%
<i>\$500,000 and over</i>	70.54%
<i>Median damages threshold</i>	\$500,000

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<i>Median damages threshold</i>	<b>\$500,000</b>

# What is your minimum threshold for the potential damages award, below which you will not accept a case?

<i>Damages Threshold below which will not accept case</i>	<i>Percent of Respondents when likelihood of winning on the merits is 95%</i>
<i>less than \$50,000</i>	1.18%
<i>\$50,000 to \$149,000</i>	20.71%
<i>\$150,000 to \$249,000</i>	22.49%
<i>\$250,000 to \$499,000</i>	27.81%
<i>\$500,000 and over</i>	27.81%
<i>Median damages threshold</i>	\$250,000



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# Which of the following reforms have reduced your willingness to accept cases?

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<i>Tort Reform</i>	<i>Percent of Respondents</i>
<i>Noneconomic damage caps</i>	31.25%
<i>Punitive damage caps</i>	3.87%
<i>Reforms eliminating joint-and-several liability</i>	12.50%
<i>Reforms to the collateral source rule</i>	15.77%
<i>None</i>	19.35%
<i>Other</i>	17.26%

<i>Severity of Patient's Injury</i>	<i>Median Indemnity for Improper Performance</i>	<i>Median Indemnity for Errors in Diagnosis</i>	<i>Median Indemnity for Failure to Supervise or Monitor a Case</i>	<i>Median Indemnity for Medication Error</i>
<i>Emotional injury only</i>	\$20,000	\$16,625	\$36,625	\$20,000
<i>Insignificant injury</i>	\$17,500	\$16,278	\$12,500	\$10,000
<i>Minor temporary injury</i>	\$30,000	\$25,000	\$25,000	\$12,500
<i>Major temporary injury</i>	\$75,000	\$60,000	\$70,000	\$25,000
<i>Minor permanent injury</i>	\$85,000	\$100,000	\$100,000	\$60,311
<i>Significant permanent injury</i>	\$152,659	\$142,341	\$175,000	\$115,000
<i>Major permanent injury</i>	\$300,000	\$225,000	\$250,000	\$220,079
<i>Grave</i>	\$457,341	\$200,000	\$464,031	\$292,500
<i>Death</i>	\$150,000	\$150,000	\$110,000	\$100,000

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# Access to Justice

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- *a good case is “anything that has to do with neurological brain damage, something that's permanent -- young person that has a long time to live with a long life expectancy; a brain damaged baby where there's a long life expectancy that required **24 hour care. When you ... you know,** where the cost of the damages are exceedingly high.”*

# GA Malpractice Lawyer Survey

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- *Random sample of 63 Georgia malpractice attorneys*
- ***Two-thirds of the attorneys wouldn't accept a case unless expected damages were at least \$250,000***
- ***Almost half of the attorneys wouldn't accept a case unless expected damages were at least \$500,000***

# Implications

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- *Many legitimate victims of medical malpractice are unable to find legal representation*
- *As a result, their harms go uncompensated*
- *In turn, this reduces the deterrent effect of the medical malpractice system by blunting incentives for the medical community to improve care*