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Alex Tabarrok's "Medical Malpractice Awards, Insurance, and Negligence"

Tabarrok's article discusses how doctors' malpractice liability insurance premiums are related to malpractice awards, and what factors affect the pricing. This article spends a lot of time taking general myths about malpractice premiums and proving them incorrect with the use of statistics. Tabarrok's article is very informative about what factors are actually related to malpractice premiums. This article is useful to not only economists, but also doctors, insurance companies, the government, and the general public who wants more information about this rather confusing topic. Tabarrok succeeds in presenting his arguments with the use of clear facts, graphs, charts, and statistical logic.

Due to the medical malpractice premiums being so high, many doctors have retired early, and many states are facing a liability crisis, which can threaten access to medical care and safety of patients. Medical malpractice premiums are very closely related to the malpractice awards. There is a positive correlation between premiums and awards that demonstrate that "premiums respond rapidly to changes in awards, but awards do not respond to changes in premiums." Many states have much higher premium rates than others, and this cannot be due to those states having more medical errors. Higher premium rates are attributed to higher awards per doctor, as shown in Figure Three.

Many trial lawyers and advocates blame insurance companies of illegally pricing the premiums. They recommend the government to regulate carefully the prices that insurers charge. They state that this illegal pricing is stemming from greed and gouging. Tabarrok states that if lack of competition is raising the premium rates, then there should be a positive correlation between malpractice premiums and concentration ratios, which measures the competition market

share of the state. Figure Four shows a rather negative correlation, thus price gouging cannot be causing the changes in insurance premiums. After doing more statistical tests, it was determined that factors like death affect medical malpractice, because death can encourage litigation. Additionally, the article states that use partisan elections to select their judges have higher award claims. Awards will also increase in relation to per-capita income.

Another way to test the tort system is by examining the medical review board that investigates physicians who have violated any professional codes. The medical board also has authority to discipline the physicians, which can be just as burdensome as a lawsuit. It is much cheaper to file a complaint, rather than a lawsuit, so the review system may have more adverse actions, or negligence reported. If it is successful, the malpractice tort award system should correlate with the review board due to the factor of negligence. However, after testing the tort system and review system, the findings show that they do not correlate. This test indicates that one of the systems wrongly interprets true malpractice.

This article gives excellent insight on what causes and factors influence medical malpractice premiums. The most interesting aspect of this report is that the author leaves the audience at some sort of a cliffhanger. There is much more research that needs to be done to understand why the tort system does not seem to present true malpractice. This is a very important article for the all people involved in the medical malpractice tort system to read, to help push further study on this issue. According to all the research, it seems many of the lawsuits that are pushed through the tort system, are not based on true malpractice. They are likely to be influenced by how experienced and talented the litigation attorneys are, and how much money the clients are willing to pay. Perhaps there needs to be a new system where medical malpractice

evaluation is a system that combines both torts and the review board. This new method may allow for the malpractice lawsuits to be actually related to true medical malpractice.

If the medical malpractice tort system continues, only more problems will emerge. Malpractice lawsuits have become a business for attorneys. Many times they lure clients in by advertising themselves on television, and by claiming that the client will not have to pay the attorney any money until the lawsuit is won. It is interesting that attorneys are trying to make the legal process more appealing for clients, which may encourage more people to file malpractice lawsuits. The encouragement of filing lawsuits may in turn be a reason why negligence is not always taken into account by the clients. Medical malpractice suits become goal oriented; both the clients and the attorneys work hard just to receive their reward money. The actual negligence of the doctor becomes a forgotten factor. The attorney just focuses on how to convince the jury that the doctor was wrong. True negligence, however, occurs when the doctor makes a decision that breaches the duty to the patient.

The medical review board consists of medical professionals, and they understand the duties of a doctor a lot more than a jury would. A medical professional understands that sometimes drastic decisions have to be made when it comes to saving someone's life, and this does not necessarily mean negligence. In the tort system, the jury can be easily swayed by the attorney with the use of pathos. I think it is important for the tort system to change its way of tackling medical negligence so true negligence can be recognized without attorneys twisting the facts around and evoking false emotions in the jury. There should be a more methodical and logical way in determining negligence by incorporating a review process by unbiased medical professional, and then awarding a reasonable award based on that determination. If negligence can be accurately determined, then the problem of inflated malpractice premiums will also be

solved. This process will take time, but eventually the premiums will lessen. If there are less awards given, due to less true negligence actually being found, then the premium rates will also go down. The time has come for the tort system to reevaluate itself and fix the method of medical malpractice litigation.