

Coming clean on medical practices



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A hospital is perhaps the last place a sick person should go because the hospital may be more dangerous than the disease. In a recent *Newsweek* article titled "Hospitals Can Kill You," Dr. Marty Makary attributes American medicine's abysmal safety record to a lack of public information on bad outcomes and bad doctors. Hospitals do not have to disclose when they injure patients through medical negligence or when they perform unnecessary procedures. Physicians who have been disciplined by one state's licensing agency routinely move to another state to practice and no one's the wiser. The solution, Makary said, is more transparency.

Makary cites a "host of new studies" that indicate that almost one in five medications, tests and medical procedures is likely unnecessary. The former dean of the Harvard School of Public Health, Dr. Harvey Fineberg, said as much as 30 to 40 percent of health-care spending pays for fraud or unnecessary treatment. The medical system steamrolls forward under its own momentum, Makary argues, because hospitals do not need to disclose bad outcomes.

Makary cites an example from his medical school days: A sweet old lady with advanced ovarian cancer wanted to die at home and spend her remaining time with her family. Makary likens the pressure to perform a biopsy and aggressively treat the woman to "a train no one could stop." By overstating the benefits and understating the risks, the doctors convinced the patient to submit. During the biopsy, however, they punctured a major vessel, causing the woman to spend six of her last nine weeks in a "hellish" ordeal.

Outcomes like this repeat themselves because hospitals are not accountable for them. Makary states that the data on outcomes exist, but it is just not available to the public.

Health-care consumers have no way to measure quality. The medical profession's lack of accountability, Makary argues, creates over-treatment, increased risk and runaway costs.

Makary quotes a 2010 study in the *New England Journal of Medicine*, which concluded that as many as 25 percent of all hospitalized patients are the victims of medical negligence with about 100,000 of them dying annually because of these errors. At about half of the hospitals that Makary surveyed in 2006, the majority of health-care workers said they would not feel comfortable receiving medical care at their own hospital.

A 2011 study by Public Citizen, a consumer advocacy group, found that at least 50 percent of doctors disciplined by hospitals escaped any kind of action by their state licensing agencies. In the study, Public Citizen compared data in the National Practitioner Data Bank with state licensing data and found that of 10,672 physicians who reported to the data bank for having their clinical privileges revoked or restricted, only 45 percent had any action taken against them by their state licensing board. Of these latter 5,887 physicians who received a pass from their state, 1,119 were disciplined by a hospital for incompetence, negligence or malpractice; 605 were disciplined for substandard care; and 220 were identified as an immediate threat.

Interestingly, Makary does not lay the blame for unnecessary treatments and costs on the bugaboo of defensive medicine; indeed, he does not even mention it. And for good reason. Numerous reports say the concept of "defensive medicine" driving up health-care costs is a fraud. Tort reform proponents say defensive medicine is the utilization of unnecessary tests and procedures caused solely by fear of litigation. Cap damages and otherwise take away victims' Seventh Amendment rights, they

argue, and all of these expenses will go away.

The defensive medicine concept is based on anecdotal reports and "surveys" sent to physicians. The peer-reviewed journal, *American Family Physician*, says evidence-based medicine is the conscientious, explicit and judicious use of the current best evidence in making decisions about the care of individual patients. In the hierarchy of evidence-based research, however, anecdotal reports and surveys rank slightly above wild guesses. The town of McAllen, Texas, is a prime example.

A *New Yorker* article by Atul Gawande says, for many years, McAllen has been the most expensive place for medical care in the entire country. McAllen physicians said the cause was malpractice lawsuits: Doctors order unnecessary tests just to protect themselves, the argument went. Yet, several years before the 2009 article was published, Texas passed one of the most draconian tort "reform" laws in the nation. Medical negligence lawsuits dropped "practically to zero," yet costs kept rising above the national norm. The answer was "overutilization, pure and simple." Doctors were increasing income with extra tests and services.

The solution to overutilization and an unacceptable level of substandard care, Makary says, is public accountability. He cites the example of a "horrific pattern" of bad outcomes in the early 1990s in heart hospitals in New York state. In 1992, the new state health commissioner made heart-surgery death rates public. He wrote, "Hospitals with high mortality rates scrambled to improve." Each year thereafter, the state's average death rate declined and bad programs improved.

If sunshine is the best disinfectant, transparency must be a close second. ■

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