

## A Patient's Right to File for Medical Malpractice

©2015 Wendy Scheuring

During a Senate Subcommittee on Public Health and Aging in July 2014, medical doctors testified that more than 1,000 hospital patients die each day due to avoidable medical mistakes, “costing the nation a colossal one trillion dollars each year,” according to *Healthcare IT News*.<sup>1</sup>

Furthermore, a 2014 study published in *The Journal of Patient Safety* reports that a staggering 440,000 patients die due to hospital errors each year. That figure does not include patients who have been adversely affected by irreversible conditions and disabling symptoms due to medical neglect, unnecessary treatments and pharmaceutical side-effects. In fact, *medical negligence is found to be the third leading cause of death in the U.S.*, following heart attack and cancer.<sup>2</sup>

Since the publishing of a 1999 report entitled “To Err Is Human”—which determined that 98,000 patients died due to hospital-related mistakes—a nationwide call to action to improve the quality of care in hospitals has warranted revisits to this initial study. Upon performing further investigation at both the post-10- and 15-year marks, the number of deaths due to medical negligence is not just continuing to increase; it is soaring.

And, while it seems that these high numbers would suggest a rise in medical malpractice suits, in 98% of reported cases, medical claims are not filed. In Florida, only one-sixth of reportable cases have resulted in a medical lawsuit.<sup>3</sup>

Still, jury trials seem to rule favorably toward plaintiffs in clear and obvious cases of medical neglect, such as the Wrongful Death and Medical Malpractice suit filed by Andreas Kemp, husband of Shauna Malone-Kemp. Mrs. Malone-Kemp was an otherwise healthy 42-year-old mother of two young children who died from secondary sepsis infection due to pneumonia. When Mrs. Malone-Kemp suffered chest pain, fever, and coughing, she could not reach the nurses at Kaiser Permanente's nurse advice line, and then was erroneously diagnosed with the flu via a physician telephone “visit.” By the time she had an in-person office visit, it was too late to treat her

---

<sup>1</sup> McCann, Erin. "Deaths by Medical Mistakes Hit Records." *Healthcare IT News*. 18 July 2014. Web. 20 Sept. 2015. <<http://www.healthcareitnews.com/news/deaths-by-medical-mistakes-hit-records>>.

<sup>2</sup> "Medical Mistakes Are 3rd Leading Cause of Death in U.S." *Sen. Bernie Sanders*. 17 July 2014. Web. 20 Sept. 2015. <<http://www.sanders.senate.gov/newsroom/press-releases/medical-mistakes-are-3rd-leading-cause-of-death-in-us>>.

<sup>3</sup> "Quick Facts on Medical Malpractice Issues." *Public Citizen*. 2015. Web. <[http://www.citizen.org/congress/article\\_redirect.cfm?ID=9125](http://www.citizen.org/congress/article_redirect.cfm?ID=9125)>.

condition and she perished. Her husband and two young children were awarded 2.74 million dollars in January 2015.<sup>4</sup>

Now, with the Affordable Care Act coming into full swing in 2016, the RAND Institute for Civil Justice projects that medical malpractice cases will increase \$120 million per year. This projection, based on partial data, assumes that with more of the population having access to health insurance coverage, patients will go to the doctor more frequently, increasing the chances of medical neglect.<sup>5</sup>

One could not argue other than it is a universal desire to improve preventative methods and firmly establish safety protocols to put an end to unnecessary loss of life and physical suffering. Still, patients should realize that they have the right to file a malpractice claim for medical harm or loss of life in the case of medical negligence. And, while malpractice laws seem complex, hiring a legal professional who specializes in this area of practice can help patients through the process to help right the wrong, to the degree possible, that has been inflicted upon them.

---

<sup>4</sup> "Mother Developing Pneumonia Calls Kaiser Nurse Advice Line, Is Not Seen by Docs until It Is Too Late. \$2.74 Million Award. Alameda County." *Jury Verdict Alert.com*. Neubauer and Associates, Inc., 2015. Web.  
<[http://www.juryverdictalert.com/index.php?option=com\\_zoo&Itemid=128&item\\_id=368&lang=us&task=item](http://www.juryverdictalert.com/index.php?option=com_zoo&Itemid=128&item_id=368&lang=us&task=item)>.

<sup>5</sup> Demko, Paul. "Reform Update: Obamacare Will Boost Malpractice Claims, RAND Study Says." *Modern Healthcare*. 14 Apr. 2014. Web.  
<<http://www.modernhealthcare.com/article/20140414/NEWS/304149963>>.