

## When Bad Doctors Happen to Good Patients

By THOMAS MOORE and STEVE COHEN - AUG. 31, 2015

[This article first appeared in the Op-Ed section of the *New York Times*.<sup>1</sup> I have added footnotes to show where the hyperlinks lead, and I have numbered the paragraphs for reference. – Dr. Grace]

[Paragraph 1] Only in Albany can a bill pass the Assembly with overwhelming bipartisan support, be sponsored by a majority of the State Senate, be endorsed by Gov. Andrew M. Cuomo, and yet never come up for a final vote. That happened to Lavern’s Law, a bill that would have helped grievously injured victims of [medical malpractice](#)<sup>2</sup> have their day in court. This summer, the Senate majority leader, John J. Flanagan, a Republican, wouldn’t allow the bill to be voted on, effectively killing it.

[2] The bill is named after Lavern Wilkinson, a Brooklyn woman whose curable form of lung [cancer](#)<sup>3</sup> went untreated when doctors at Kings County Hospital failed to alert her to a suspicious mass noted on an [X-ray](#)<sup>4</sup> taken three years earlier. Ms. Wilkinson died, and her daughter was barred from bringing a lawsuit against the negligent hospital because in New York a victim has only two and a half years from the time of the medical mistake in which to bring an action, not from the time the error was discovered or should have been discovered. The latter standard is the law in 44 states, and Lavern’s Law would have adopted the provision in New York.

[3] Hospitals are dangerous places. In 1999 the Institute of Medicine at the National Academy of Sciences published a study, “[To Err is Human](#),”<sup>5</sup> which concluded that at least 44,000 patients were killed (and many more injured) in hospitals each year because of medical errors. By 2011, a [study](#)<sup>6</sup> in the journal *HealthAffairs* estimated that the number of avoidable deaths was probably 10 times higher. [Hundreds of thousands](#)<sup>7</sup> more patients are seriously injured through negligence. Doctors and hospitals are doing a poor job of policing themselves, yet they have been successful at keeping anyone else from doing it.

[4] The opposition to Lavern’s Law came from the hospital and health care lobby, apparently concerned that the bill might result in more medical malpractice lawsuits. It very well might, but the actual number would probably be minuscule: Of the hundreds of possible cases we evaluate every year, only a handful are outside the statute of limitations. But it is still hard to tell those victims that neither we nor the judicial system can help them.

[5] Surprisingly, despite the frequency of avoidable errors, very few wind up as medical malpractice lawsuits. A 2013 [study](#)<sup>8</sup> concluded that about 1 percent of medical errors resulted in a claim. Only a tiny percentage of malpractice cases result in doctors’ hospital privileges being curtailed. Between 2011 and 2013, there were approximately 7,400 complaints against doctors [filed](#)<sup>9</sup> each year with the New York

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<sup>1</sup> <http://www.nytimes.com/2015/08/31/opinion/when-bad-doctors-happen-to-good-patients.html>

<sup>2</sup> hyperlink to search results for recent nytimes articles: keyword “medical malpractice.”

<sup>3</sup> hyperlink to search results for recent nytimes articles: keyword “cancer”

<sup>4</sup> hyperlink to search results for recent nytimes articles: keyword “X-Ray”

<sup>5</sup> <http://iom.nationalacademies.org/~media/Files/Report%20Files/1999/To-Err-is-Human/To%20Err%20is%20Human%201999%20%20report%20brief.pdf>

<sup>6</sup> <http://content.healthaffairs.org/content/30/4/581.long#sec-5>

<sup>7</sup> <http://commonhealth.wbur.org/2014/12/medical-errors-massachusetts-study>

<sup>8</sup> <http://archinte.jamanetwork.com/article.aspx?articleid=1656536>

<sup>9</sup> [https://www.health.ny.gov/professionals/doctors/conduct/annual\\_reports/2011-2013/docs/2011-2013\\_opmc\\_final\\_rpt.pdf](https://www.health.ny.gov/professionals/doctors/conduct/annual_reports/2011-2013/docs/2011-2013_opmc_final_rpt.pdf)

State Office of Professional Medical Conduct. Most consumer complaints are not about suspected malpractice — after all, it takes a fair amount of expertise to identify medical errors caused by negligence. Rather, most allege impairment, improper prescribing, sexual misconduct and fraud. Of the complaints filed, only 287 per year, on average — less than 4 percent — resulted in serious sanctions: the loss, suspension, or restriction of the physician’s license.

[6] And even if a victim wins a medical malpractice lawsuit, awards are generally modest. Thirty-three states restrict the amount of compensation for the pain and suffering victims have endured. According to the Department of Justice, the median award by juries is \$400,000; in bench trials, where the judge also serves as the jury, the median award is \$631,000. But when juries do award large pain-and-suffering amounts, it is because that is the only way our system allows people who have been grievously harmed to recoup some measure of what they have lost.

[7] That Lavern’s Law wasn’t allowed to come up for a final vote is Albany’s shame. The greater shame is that hospitals don’t put more emphasis on patient safety. As the Lavern’s Law travesty makes clear, we need better solutions. Don’t limit what injured people may collect, and don’t make it more difficult for victims to get their cases heard. Even better for all concerned, keep the negligent act from ever happening in the first place. And there are practical ways to do that.

[8] Doctors and hospitals must do a better job of policing themselves. Six percent of all doctors were [estimated](#)<sup>10</sup> to be responsible for 58 percent of all malpractice payments between 1991 and 2005. State licensing agencies must do a much better job of keeping those worst of the worst out of hospitals. The threshold for state medical licensing agencies to initiate reviews should be reduced; in New York it takes six malpractice judgments or settlements. It should be three at most.

[9] Also, top hospital administrators should be held accountable for negligence committed in their facilities. The 10 highest-paid administrators and doctors at each hospital should have a significant portion of their compensation tied to patient safety. If 30 percent of their compensation was tied to an annual reduction in malpractice claims against their hospital, patient safety would be a higher priority. There would be no personal liability, but it would ensure that everyone in the organization would be more focused on keeping patients safe. But as long as hospitals and doctors block legislation and fight regulation, patients will remain in peril.

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<sup>10</sup> <http://www.citizen.org/publications/publicationredirect.cfm?ID=7497#14>

<sup>11</sup> <http://www.kdln.com/about-us/partners/thomas-a-moore>

<sup>12</sup> <http://www.kdln.com/about-us/associates/steve-cohen>