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## Book Review: Tom Baker's The Medical Malpractice Myth

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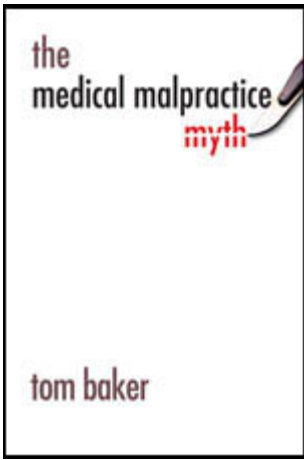
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**THE MEDICAL MALPRACTICE MYTH, by Tom Baker.** Chicago and London, University of Chicago Press, 2005. 222pp. \$22.50. Hardback. ISBN: 0226036480.

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Tom Baker's *THE MEDICAL MALPRACTICE MYTH* tackles its complex and multi-layered subject concisely and elegantly. From the perspective of a professor of law with deep expertise in Torts and Insurance Law, Baker begins by laying out the myth: Medical malpractice litigation is exploding, and undeserving plaintiffs and their attorneys reap the benefits in the form of enormous, unjustified jury awards, while physicians struggle under the burden of unmanageable insurance premiums and sometimes must close their practices altogether. Baker is explicit about his goal for the book—"reframing the public discussion about medical malpractice lawsuits"—and his readers will likely agree that he accomplishes that goal convincingly. One of the book's greatest strengths is its interweaving of legal, medical, and political perspectives, which will, Baker hopes, facilitate substantive discussion and foster understanding between the medical and legal communities.

Baker organizes his book into eight chapters. Chapter One lays out the myth and provides an overview of the data from the studies that he uses to debunk it. As Baker explains, the real problem is not too much litigation; it is too much medical malpractice. The real costs of medical malpractice are measured in lost lives, additional medical expenses, lost productivity, and pain and suffering. Spiraling medical malpractice premiums actually result from economic influences and insurance industry competition rather than from huge jury awards. And, although some malpractice litigation is without merit, most specious claims disappear prior to trial, and many more deserving claims never get litigated. Chapter One also contains an excellent primer on tort principles and medical malpractice liability which enables non-lawyer readers to appreciate the special complexities of malpractice litigation compared to ordinary tort law, such as automobile accident law, with which readers likely are more familiar.

Chapters Two through Seven explore and debunk various aspects of the malpractice myth in more detail. In Chapter Two, Baker elaborates on the point that medical malpractice itself, rather than lawsuits, pose the most significant danger to the public. The data from a series of well-designed studies on the prevalence of medical error provide ample support for this point. Among other ancillary points, Baker adds an important observation about risk perception—that news stories exaggerating the impact of malpractice lawsuits garner much more public attention than stories suggesting that malpractice litigation has little effect on the health care system. Chapter Three convincingly argues that the real blame for high malpractice insurance premiums lies with the insurance industry's management of profits, losses, and [\*254] reserves during fluctuations in the underwriting cycle, not with injured patients who pursue compensation in court. The rise in premiums from the mid-1980s until the early 2000s did not result from a sudden shift in rates of malpractice payouts. Insurance companies simply suffered because they chose to put larger amounts of money into reserve to compensate for years of under-funding reserves prior to the crisis. Baker predicts that this "boom and bust"

underwriting cycle will recur, but that reconfiguration of the malpractice insurance market may help to dampen its impact on physicians in the future.

Chapter Four resoundingly disposes of the myth that patients file frivolous malpractice lawsuits on a regular basis and that juries award enormous damages even when doctors have not been negligent. In fact, the reason why many patients and their families sue is simply to discover the truth when physicians are unwilling to admit that they have made a medical error. Chapter Four also describes and discusses the evidence demonstrating the efficiency of the legal system in effectively distinguishing between valid and frivolous claims and adds that most people who are injured by malpractice never sue their physicians. Chapters Five, Six, and Seven, respectively, delve into the value of malpractice lawsuits in improving patient safety and compensating injured plaintiffs, the myth of defensive medicine as contributing to the high costs of medical care, and the myth that physicians' fear of malpractice litigation together with high insurance premiums is diminishing the supply of doctors and making it more difficult for patients to obtain health care.

Finally, Chapter Eight offers a series of carefully considered reforms to address discrete problems in the existing medical malpractice litigation system. Because, as Baker reminds us, the real problem lies not in medical malpractice litigation but in too many preventable acts of malpractice, reforms must provide injured patients with access to information about the cause of their injuries so that litigation focuses on cases with merit, and patients no longer feel the need to file lawsuits simply to discover the truth of what happened to them. In connection with this proposal, Baker urges evidence-based legal reforms to achieve the following goals: 1) reducing the frequency of medical malpractice; 2) giving patients information to evaluate whether their bad medical outcomes actually resulted from medical malpractice; 3) improving compensation for medical injuries; and 4) reforming the malpractice insurance industry so that the boom and bust underwriting cycle exerts less of an impact on physicians. No one would disagree with the value of these goals, and Baker makes nice work of elaborating on the process for achieving them, including, where appropriate, acknowledgment and discussion of some significant hurdles that reformers may encounter.

Without a doubt, the book is quite timely. President Bush's 2006 State of the Union Address included a request for medical liability reform based on the malpractice myth—that "lawsuits are driving many good doctors out of [\*255] practice." Throughout the book, Baker very effectively connects the legal arguments and the insurance and litigation data to his broader points about the politics of tort reform. Baker's style is concise, lively, and very readable. He effectively weaves in the personal stories of particular plaintiffs to illustrate many of his broader points. The book is aimed at and accessible to a general audience, but it will also prove interesting and informative to lawyers, and to legal, medical and public health academics. Although his thesis likely would be less surprising to the latter groups, Baker's careful construction and support of his argument makes a valuable contribution to the malpractice debate in academia. It can also serve as a fine secondary source in law school or public health courses on insurance law or medical malpractice. Even those readers who disagree with Baker's argument and his conclusions will find the book informative and helpful in strengthening their understanding of the law and politics of the malpractice debate.

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