

New book explores why some reform efforts haven't delivered

Missing the Mark on Medical Malpractice

Dramatically rising costs for medical malpractice insurance have been one of the most controversial aspects of the American health care system, with repeated attempts to curb litigation to drive the costs down. However, it's possible these reforms have not delivered because they are not addressing the real problems.

That's the premise of a new look at the issue, *Medical Malpractice Litigation: How It Works, Why Tort Reform Hasn't Helped*, which is coauthored by leading health policy scholars Bernard S. Black, David A. Hyman, Myungho S. Paik, William M. Sage, and Charles Silver. Over the past 50 years, the United States has experienced a series of malpractice liability crises, with insurance premiums spiking sharply and fueling demands for reform. In response, states have adopted a range of measures, and federal strictures on the largely state-based system have been discussed frequently on Capitol Hill.

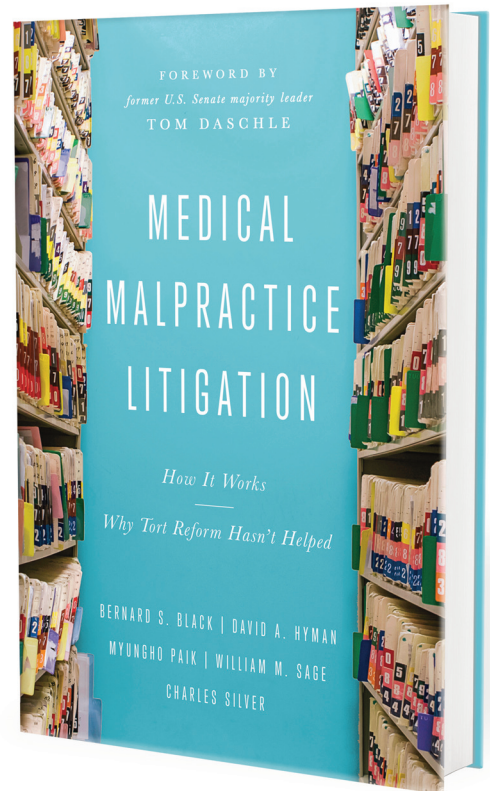
The authors of the book find that the intense political debate has been marked by a severe shortage of evidence that has led to a perennial misdiagnosis of the problem. The most common attempted fix has been liability caps, which place limits on how much can be awarded in damages either as a whole or for specific types such as punitive damages. This narrative sees the problem as essentially one of greedy lawyers and gullible jurors handing out exorbitant awards. However, the empirical data don't back that up,

with damage caps having done little to solve the problem of unaffordable malpractice insurance.

Instead, the problem lies in the much less glamorous but more pernicious effects in the reinsurance market. Regulatory structures distort the market in such a way that the expected benefit of liability caps—namely, lower insurance costs for providers—does not actually get passed along to doctors and hospitals, nor ultimately to consumers. Likewise, liability caps did not produce the expected flood of physicians to states that adopted these reforms, indicating that they added little incentive in practice.

Despite its political popularity, liability insurance is not a major contributor to spiraling health care prices, and politicians who frame it as such are overstating what even a successful reform can deliver. Instead, the dysfunctional market is dominated by third-party payments through employer-based health insurance and government programs, leaving little room for individual choice and competition to drive down costs. It is these policies, and not the threat of liability, that have produced a culture of medicine that is detached from cost-benefit analysis and is driven toward expensive procedures and testing regardless of the price.

Medical Malpractice Litigation provides data-driven, fact-based answers to these and other important questions for policy-



makers and ordinary Americans alike in clear, accessible terms. The authors represent a cross-section of the political spectrum but agree that the medical malpractice issue is seriously misunderstood in American politics. By setting the record straight, they hope that a more informed discussion can be held on the real root of the problems in both the malpractice litigation system and in the market for health care more broadly. ■

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in the modern world. If there are people who condemn Islam, who offend Islam, don't listen to them, don't join their events, or stop buying their magazines. But there's really no justification in the Qur'an for coercion, for violence, for killing people, or

for jailing people.

There needs to be a stronger push in the Muslim world with these sorts of arguments—that there is a sound theology, a strong Islamic case grounded in the Qur'an, behind the idea of peaceful toleration. Muslims who are eager to

punish blasphemy by force should also realize that they're just killing and tormenting innocent people. And by killing and tormenting innocent people in the name of your faith, you're not bringing any honor to your faith. You're just bringing shame. ■