

## POLITICAL ANIMAL

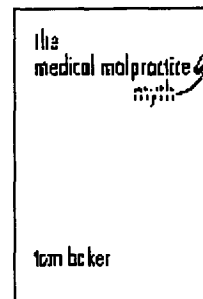
By Kevin Drum

December 7, 2005

**THE MEDICAL MALPRACTICE MYTH....**Here's a book recommendation for you if you're (a) interested in medical malpractice and (b) *really* interested in medical malpractice. It's *The Medical Malpractice Myth*, by Tom Baker, and it's a terrific, readable, fact-filled analysis of what we know and don't know about medical malpractice. And it's less than 200 pages long!

Here's a bullet point summary of Baker's case:

1. There's a lot more genuine medical malpractice than you think. A long string of studies has shown that about 1 out of 100 hospitalized patients are victims of negligent malpractice. These studies were supervised by doctors and used a very strict definition of "negligent."
2. Most victims never sue. Less than 5% of patients who are victims of negligence file a claim.
3. Patients who bring weak claims usually do so only because hospitals refuse to disclose information about their quality of care unless they are taken to court. Patients who learn that their care was reasonable usually drop their claims.
4. What's more, contrary to myth, insurance companies very seldom pay off weak claims even if patients continue to pursue them.
5. Rising malpractice awards are not responsible for skyrocketing insurance premiums. The insurance cycle is.
6. In any case, the evidence that fear of malpractice suits produces significant amounts of defensive medicine is pretty thin — although a small amount of defensive medicine does exist. Likewise, the evidence that malpractice payouts are driving doctors out of practice is low and mostly restricted to doctors in rural areas — which have been losing doctors for decades for financial reasons anyway.



Baker also has a proposed solution, which he calls the Patient Protection and Healthcare Responsibility Act. The four main goals of PPHRA are to reduce the actual amount of malpractice; provide patients with more information up front so they can decide if they are the victims of malpractice; make compensation for medical injuries fairer; and regulate the boom-and-bust insurance cycle that's responsible for the skyrocketing insurance premiums that are so disruptive for doctors.

Yes, this is a very wonky subject. But Baker's approach is both comprehensive and heavily evidence based, relying on peer-reviewed research and exhaustive studies. There are no polemics here, just a concentrated dose of facts and common sense.

Highly recommended for doctors and anyone else interested in cutting through the noise machine that mostly surrounds the medical malpractice debate.

NOTE: An excerpt from the book is here.



## The Medical Malpractice Myth?

Monday, December 19, 2005, 2:00-4:00 p.m.  
Wohlstetter Conference Center, Twelfth Floor, AEI  
1150 Seventeenth Street, N.W., Washington, D.C. 20036

*Is the real problem with America's medical liability system too much medical malpractice rather than too much litigation? Are recent rises in medical malpractice insurance premiums caused by economic cycles instead of increasing claims? Should the system be compensating more people? In his new book, *The Medical Malpractice Myth*, Professor Tom Baker, who is the director of the Insurance Law Center at the University of Connecticut, answers these questions affirmatively, criticizes proposed and implemented liability reforms, and suggests, among other changes, the creation of a supplemental "no-fault" mechanism. Professor Baker will present his findings at this AEI event and will debate his conclusions with a panel of experts.*

*Panelists include AEI resident fellow Ted Frank, director of AEI's Liability Project; Martin Grace, associate director of the Center for Risk Management and Insurance Research at Georgia State University; and David A. Hyman, one of the nation's leading health law experts and a professor of law at the University of Illinois. Jonathan Klick, an economist and a law professor at Florida State University, will moderate.*

*The AEI Liability Project ([www.liabilityproject.org](http://www.liabilityproject.org)) seeks to promote a better understanding of the scope and consequences of the liability crisis and to help ensure that political or legal reform efforts are aimed at the appropriate targets.*

1:45 p.m.	Registration	
2:00	Presentation:	TOM BAKER, University of Connecticut Law School
2:45	Discussion:	TED FRANK, AEI MARTIN F. GRACE, Georgia State University DAVID A. HYMAN, University of Illinois Law School
	Moderator:	JONATHAN KLICK, AEI and Florida State University
4:00	Adjournment	

Shortly after the event occurs, a video webcast will be available on the AEI website at [www.aei.org/eventvideos](http://www.aei.org/eventvideos).

For more information, please contact Philip Wallach at [pwallach@aei.org](mailto:pwallach@aei.org).

For media inquiries, please contact Veronique Rodman at [vrodman@aei.org](mailto:vrodman@aei.org).

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**The Medical Malpractice Myth?**

December 19, 2005

Biographical Statements

**Tom Baker** is the Connecticut Mutual Professor of Law and the director of the Insurance Law Center at the University of Connecticut. Before teaching law, he clerked for Judge Juan Torruella of the United States Court of Appeals for the First Circuit, practiced with the firm of Covington & Burling, and served as an Associate Counsel for the Independent Counsel investigating the Iran-Contra affair. His research examines issues of risk and responsibility in the fields of torts and insurance. Professor Baker is active in the Law and Society Association and is a co-founder of the Insurance and Society Study Group, an informal association of scholars from law, humanities, and the social sciences who write about risk and insurance. He is the author of *Insurance Law and Policy* (Aspen 2003) and co-editor of *Embracing Risk: The Changing Culture of Insurance and Responsibility* (U. Chicago 2002), as well as *The Medical Malpractice Myth* (U. Chicago 2005).

**Ted Frank** is a resident fellow at AEI and director of the AEI Liability Project, managing the institute's research about liability reform proposals, tort law, class actions and civil procedure, and other related issues. Before joining AEI, Mr. Frank worked at law firms in Los Angeles and Washington, D.C., and clerked for Judge Frank H. Easterbrook. His litigation work included Vioxx and automobile product liability cases; class action defense; and antitrust and patent cases.

**Martin F. Grace** is associate director and research associate of the Center for Risk Management and Insurance Research at Georgia State University in Atlanta, where in 2002 he was named James S. Kemper Professor of Risk Management. Mr. Grace's research concerning the economics and public policy aspects of insurance regulation and taxation has been published in various economics and insurance journals. Mr. Grace is a former president of the Risk Theory Society, an associate editor of the *Journal of Risk and Insurance*, and editor of RiskProf—a weblog on risk and insurance issues.

**Dr. David Hyman** is widely considered to be one of the country's top health law scholars. His principal research interests are the regulation of health care financing and delivery and empirical law and economics. Professor Hyman has published articles on a wide range of subjects, including medical malpractice, managed care, consumer protection, narrative, professional responsibility, tax exemption, and civil procedure. Professor Hyman served for three years as Special Counsel to the Federal Trade Commission, where he was responsible for coordinating hearings and a major report on health care and competition law and policy. He is on the editorial board of the *American Journal of Law and Medicine*, and is an adjunct scholar at the Cato Institute.

**Jonathan Klick** is an assistant professor of law and a courtesy professor of economics at Florida State University in Tallahassee, Florida, and serves as an adjunct scholar for AEI's Liability Project. Mr. Klick's research focuses on statistical analyses of the effects of legal changes on individual behavior, and he has published academic articles in *The Journal of Law and Economics*, *The Journal of Economic Perspectives*, and *The Journal of Legal Studies*, as well as numerous medical journals and law reviews.