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## **LIMITING THE RIGHTS OF MEDICAL MALPRACTICE VICTIMS - THE DISCRIMINATORY IMPACT ON MINORITIES**

Racial and ethnic minorities receive inferior medical treatment by the health care industry and are being subjected to high rates of preventable medical errors. Moreover, racial and ethnic minorities are uninsured more often than non-Hispanic whites, a status that frequently results in substandard care.

As a result, proposals that limit the rights of patients who have been killed or injured due to medical malpractice disproportionately hurt racial and ethnic minorities.

- The Harvard Medical Practice Study found, “there were significant differences between hospitals that serve a predominantly minority population and other hospitals. That is, blacks were more likely to be hospitalized at institutions with more AEs [adverse events] and higher rates of negligence.”<sup>1</sup>
- According to a 2002 study by the National Academy of Sciences Institute of Medicine , “a consistent body of research demonstrates ... that U.S. racial and ethnic minorities are less likely to receive even routine medical procedures and experience a lower quality of health services.”<sup>2</sup>
- The Agency for Healthcare Research and Quality, a division of the U.S. Department of Health and Human Services, found, “blacks received poorer quality of care than whites in 43 percent of the core measures” and “disparities in quality and access to care are growing wider in the Hispanic population.”<sup>3</sup>
- Racial and ethnic minorities are uninsured more often than non-Hispanic whites, a status that frequently results in less than adequate care.<sup>4</sup>
  - Uninsured persons with traumatic injuries are less likely than those with insurance to be admitted to the hospital, receive fewer services if they are admitted, and are more likely to die.<sup>5</sup>
  - A study by the Robert Wood Johnson Foundation found that compared with the insured, those without health coverage who are hospitalized are more likely to receive fewer services, experience second-rate care, and die in the hospital.<sup>6</sup>

- The hospital location with the highest proportion of negligent adverse events (52.6 percent) was the emergency department, where people without health insurance often go for primary care.<sup>7</sup>

Minorities are frequently forced to bear a disproportionately large share of our health and safety problems. Laws that weaken the civil justice system have a troubling and disproportionate effect on racial and ethnic minorities who have been injured and seek justice through the civil courts.

*From: "The Racial Implications of Tort Reform" by Joanne Doroshow and Amy Widman, 25 WASH. U. J.L. & POL'Y 161 (2007), is part of a volume entitled, "ACCESS TO JUSTICE: THE SOCIAL RESPONSIBILITY OF LAWYER." <http://law.wustl.edu/Journal/index.asp?ID=6718>. The full article is here: <http://law.wustl.edu/Journal/25/DoroshowWidman.pdf>*

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*Center for Justice & Democracy is a tax-exempt, non-profit, non-partisan, public interest organization that works to educate the public about the importance of the civil justice system. CJ&D fights to protect the right to trial by jury and an independent judiciary for all.*

## Notes

<sup>1</sup> Harvard Medical Practice Study, *Patients, Doctors, and Lawyers: Medical Injury, Malpractice Litigation, and Patient Compensation in New York* (1990).

<sup>2</sup> Institute of Medicine Press Release, "Unequal Treatment: Confronting Racial and Ethnic Disparities in Health Care," available on-line at <http://www.iom.edu/?id=4475&redirect=0>; Smedley, Stith and Nelson, eds., *Unequal Treatment: Confronting Racial and Ethnic Disparities in Health Care* (2002) Institute of Medicine, National Academy Press: Washington D.C. (2002).

<sup>3</sup> Remarks by Carolyn Clancy, M.D., Director of the Agency for Healthcare Research and Quality, "Highlights and Implications from the Findings of the *National Healthcare Quality Report and Disparities Report*," Jan. 9, 2006.

<sup>4</sup> Families USA Foundation, *Going Without Health Insurance: Nearly One in Three Non-Elderly Americans* (March 2003), found at <http://www.familiesusa.org>; Center for Disease Control, *Health, United States, 2002*, found at <http://www.cdc.gov/nchs/hus.htm>; Agency for Healthcare Research and Quality, "Hispanics and Black Americans Still More Likely than Whites To Be Uninsured," August 2, 2000, found at <http://www.ahrq.gov/news/press/pr2000/meps98pr.htm>; Henry J. Kaiser Family Foundation and UCLA Center for Health Policy Research, *Racial and Ethnic Disparities in Access to Health Insurance and Health Care* (April 2000), found at <http://www.kff.org/content/2000/1525/UCLAREport.pdf>.

<sup>5</sup> Institute of Medicine, *Care Without Coverage: Too Little, Too Late* National Academy Press: Washington, D.C. (2002) p. 12.

<sup>6</sup> Families USA Foundation, *Going Without Health Insurance: Nearly One in Three Non-Elderly Americans* (March 2003), p. 15, found at <http://www.familiesusa.org>.

<sup>7</sup> Kohn, Corrigan and Donaldson, Eds., *To Err Is Human; Building a Safer Health System*, Institute of Medicine, National Academy Press: Washington, D.C. (1999), p. 30.