

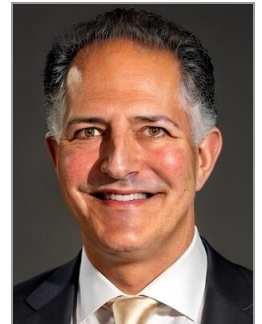
To Shrink Jury Awards, Address Preventable Medical Errors

By **Eric Weitz** (October 16, 2024, 3:32 PM EDT)

In August, the jury in *Hernandez v. Temple University Hospital Inc.*, in the Philadelphia Court of Common Pleas, **reached a \$45 million verdict** against the hospital.

In response, the hospital's general counsel said, "We are deeply concerned that verdicts of this nature jeopardize the availability of quality medical care for Philadelphians, further jeopardizing the health of those most needed."^[1]

The same month, the Marsh McLennan Agency, a leader in providing insurance solutions and risk management in healthcare, asserted on its website that "[w]hen health care providers are subject to large jury awards, it can impact their ability to deliver quality care and invest in necessary resources."^[2]



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An article published by Texas A&M University-Corpus Christi on its website in 2022, titled "Malpractice and Its Effects on the Healthcare Industry," noted that "[p]hysicians and other healthcare providers have long argued that malpractice claims are a leading cause of escalating healthcare costs."^[3]

But none of these statements acknowledge a major cause of the type of jury verdict seen in *Hernandez v. Temple University Hospital*: preventable medical errors. These errors come in many forms, ranging from medication errors to hospital-acquired infections — and they were identified in 2016 as the third-leading cause of death in the U.S.^[4]

Patient Safety Trends

While insurers and hospitals have been profitable in relation to claims in recent years, patient safety shows signs of deterioration.

According to the Pennsylvania Patient Safety Authority, the number of reported adverse events and near misses in Pennsylvania hospitals increased by approximately 38% from 2014 to 2023. Notably, incidents related to surgical errors, medication errors and hospital-acquired infections have all seen significant rises:

- Reported cases of wrong-site surgeries and retained surgical items increased by 43% over the decade.
- Instances of medication administration errors rose by 33%, contributing to increased morbidity and mortality rates.
- Despite efforts to combat hospital-acquired infections, the incidence of infections grew by 27%.^[5]

Profitability Metrics

Why do these errors happen in the first place? Multiple studies have confirmed that there is a financial disincentive to improve care.

A 2014 study published by the Centers for Medicare and Medicaid Services identifies nearly \$150 million dollars paid to hospitals annually to treat preventable hospital-acquired infections.[6]

Michael Millenson, an adjunct professor at Northwestern University's Feinberg School of Medicine, and an internationally recognized expert on improving U.S. healthcare, notes, "[T]here's another elephant in the room that makes providers squirm even more. Put bluntly, many hospital executives believe they make more money from complications." [7]

This financial reality remains an unaddressed cause of malpractice verdicts.

Another financial reality rarely acknowledged publicly by the healthcare leaders responding to each malpractice verdict is the financial strength of the malpractice insurance and self-insurance entities. For example, according to the Pennsylvania Insurance Department, medical malpractice insurers have a combined ratio — a formula used to measure profitability — that fluctuated between 90% and 105% from 2014 to 2023.

A combined ratio below 100% indicates profitability. Over the past decade, medical malpractice insurers in Pennsylvania have generally maintained profitability.[8]

Simply put, insurers are taking in more than they are paying out. Even self-insured hospitals in Pennsylvania — which assume the risk of malpractice claims instead of purchasing insurance — also experience profitability inside their pool of funds dedicated to paying these verdicts.

Other factors that insurers and self-insured hospitals use to measure profitability are claim frequency and severity. Data from the National Practitioner Data Bank indicate that the frequency of malpractice claims in Pennsylvania decreased by approximately 18% from 2014 to 2023. However, the severity — or the average payout per claim — increased by around 28% during the same period.[9]

The claims experience for self-insured hospitals mirrors that of traditional insurers, with a decline in claim frequency and an increase in claim severity. According to Pennsylvania Health Care Cost Containment Council data, the number of malpractice claims against self-insured hospitals dropped by about 22% over the decade, while the average payout per claim rose by 32%.[10]

As preventable medical error has increased, so have verdicts. Yet, as the data confirms, these verdicts are not financially hurting healthcare.

Time to Clean Off the Mirror

The reality is that health systems and hospitals have improved profitability, while watching preventable medical errors increase. It is long past time for medical providers to focus on curing preventable medical errors.

If health systems want to reduce the number of adverse jury decisions — and the size of payouts — they should focus on making care safer for our loved ones.

The time has come for healthcare leaders to look in the mirror and remember what every medical student is taught: Treat the cause, not the symptoms.

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[1] Phila. Jury Hits Temple Hospital With \$44.9M Verdict Over Patient's Post-Discharge Choking Injuries, The Legal Intelligencer (law.com), last accessed Aug. 17, 2024.

[2] The critical need for health care providers to manage litigation risks, MMA (marshmma.com), last

accessed Aug. 17, 2024.

[3] The Impact of Malpractice on the Healthcare Industry, TAMUCC Online, last accessed Aug. 17, 2024.

[4] Makary M.A., Daniel M., Medical error — the third leading cause of death in the US, BMJ, May 3, 2016.

[5] Pennsylvania Patient Safety Authority, Annual Reports, 2014-2023.

[6] Jha, A. K., Orav, E. J., and Epstein, A. M., Hospital-Acquired Conditions, Medicare Payments, and Patient Outcomes, The New England Journal of Medicine, 363(26), 2481-2483. doi:10.1056/NEJMp1012494 (2010).

[7] Why We Still Kill Patients: Invisibility, Inertia, And Income, Health Affairs, last accessed Aug. 17, 2024.

[8] Pennsylvania Insurance Department, Annual Reports, 2014-2023.

[9] National Practitioner Data Bank, Data Analysis, 2014-2023.

[10] Pennsylvania Health Care Cost Containment Council, Financial Reports, 2014-2023.