

**Fall 2009**  
**Duke University**  
**Frank A. Sloan**

**Reading List: Economics 195/295 or 412 Economics of Medical Malpractice**

Note: The section headings correspond to the titles of the chapters of the Sloan-Chepke book. The chapter numbers refer to chapters in the Sloan-Chepke. *Medical Malpractice*. Cambridge MA: MIT Press, 2008. Optional readings are provided on a separate list and may be particularly useful for your term papers.

**I. Introduction**

Chapter 1 **August 26**

Gawande, A., 2009. The Cost Conundrum: What a Texas Town Can Teach Us About Health Care, *The New Yorker*, June 1. **August 26**

Brennan, T, L Leape, et al. 1991. Incidence of Adverse Events and Negligence in Hospitalized-Patients - Results of the Harvard Medical-Practice Study-I. *New England Journal of Medicine* 324 (6):370-376. **August 26**

Silver, C., K. Zeiler, et al. 2008. Malpractice Payouts and Malpractice Insurance: Evidence from Texas Closed Claims, 1990-2003. *Geneva Papers on Risk and Insurance-Issues and Practice* 33 (2):177-192. **August 26**

Mello, M. M., and D. M. Studdert. 2008. Deconstructing Negligence: The Role of Individual and System Factors in Causing Medical Injuries. *Georgetown Law Journal* 96 (2):599-623. **September 2**

**II. Why the Crises in Medical Malpractice?**

Chapter 2 **September 2**

Baker, T 2005. Medical Malpractice and the Insurance Underwriting Cycle. *DePaul Law Review* 54:393-438. **September 2**

Cooter R. and T. Ulen. 2007. An Economic Theory of Tort Law. Chapter 8:322-366. **September 2**

**III. An Increased Threat of Lawsuits and Higher Premiums: The Consequences**

Chapter 3 **September 9**

Kessler, D, and M McClellan. 1996. Do Doctors Practice Defensive Medicine? *Quarterly Journal of Economics* 111 (2):353-390. **September 9**

Sloan, F. A. and J. H. Shadle, 2009. Is There Empirical Evidence For “Defensive Medicine”? A Reassessment. *Journal of Health Economics* 28(2):481-491. **September 9**

Kim, B. 2007. “The Impact of Malpractice Risk on the Use of Obstetrics Procedures,” *Journal of Legal Studies* 36 (June): S70-S119. **September 9**

Yang, NY, M. Mello, et al. 2009. Relationship Between Malpractice Litigation Pressure and Rates of Cesarean Section and Vaginal Birth After Cesarean Section. *Medical Care* 47(2):234-242. **September 16**

- Currie, J. and WB MacLeod. 2008. First Do No Harm? Tort Reform and Birth Outcomes, *Quarterly Journal of Economics* 123(2) (May): 795-830. **September 16**
- Baicker, K, E Fisher, et al. 2007. Malpractice Liability Costs and the Practice of Medicine in the Medicare Program. *Health Affairs* 26 (3):841-852. **September 16**
- Klick, J. and T. Stratmann, Medical Malpractice and Physicians in High-Risk Specialties, *Journal of Legal Studies* 36 (June): S121-142. **September 16**
- Matsa, DA. 2007. Does Malpractice Keep the Doctor Away? *Journal of Legal Studies* 36 (June): S143-S182. **September 23**
- Chou, D-F and A.T. L. Sasso. 2009. Practice Location Choice by New Physicians: The Importance of Malpractice Premiums, Damage Caps, and Health Professional Shortage Area Designation. *Health Services Research* 44(4):1271-89. **September 23**
- Hickson, G, C Federspiel, et al. 2002. Patient Complaints and Malpractice Risk. *Journal of the American Medical Association* 287 (22):2951-2957. **September 23**

#### **IV. Governments' Responses to Medical Malpractice Crises—and their Effects**

##### **Chapter 4 September 23**

- Studdert, D, M Mello, et al. 2004. Medical Malpractice. *New England Journal of Medicine* 350 (3):283-292. **September 30**
- Yachee, S. 2009. Private Conflict and Policy Passage. *Interest-Group Conflict and the Policy Studies Journal* 37(2):213-231. **September 30**
- Harris, L. 2009. Tort Reform as Carrot-and-Stick. *Howard Journal on Legislation* 46(1):163-209. **September 30**
- Moncrieff, A.R. 2009. Federalization Snowballs: The Need for National Action in Medical Malpractice Reform. *Columbia Law Review* 609:844-892. **September 30**

#### **V. Ceilings on Nonmonetary and Total Losses**

##### **Chapter 5 September 30**

- Nelson, L, M Morrissey, et al. 2007. Damages Caps in Medical Malpractice Cases. *Milbank Quarterly* 85 (2). **October 6**
- Bovbjerg, R, F Sloan, et al. 1989. Valuing Life and Limb in Tort: Scheduling "Pain and Suffering". *Northwestern University Law Review* 83:908-976. **October 6**
- Avraham, R. 2006. Putting a Price on Pain-and-Suffering Damages: A Critique of the Current Approaches and a Preliminary Proposal for Change. *Northwestern University Law Review* 100 (1):87-119. **October 6**
- Sloan, F. W K, Viscusi, et al. 1998. Alternative Approaches to Valuing Intangible Health Losses: the Evidence for Multiple Sclerosis. *Journal of Health Economics*. 17 (4):475-497. **October 6**

#### **VI. Compensating Plaintiffs' Attorneys and Early Offers**

##### **Chapter 6 October 13**

- Kritzer, H 2002. Lawyer Fees and Lawyer Behavior in Litigation: What Does the Empirical Literature Really Say? *Texas Law Review* 80:1943-1983. **October 13**

- Brickman, L 2003. Effective Hourly Rates of Contingency-Fee Lawyers: Competing Data and Non-Competitive Fees. *Washington University Law Quarterly* 81 (3):653-669. **October 13**
- Helland, E, and A Tabarrok. 2003. Contingency Fees, Settlement Delay, and Low-Quality Litigation: Empirical Evidence from Two Datasets. *Journal of Law, Economics, and Organization* 19 (2):517. **October 13**
- Hersch, J, J O'Connell, et al. 2007. An Empirical Assessment of Early Offer Reform for - Medical Malpractice. *Journal of Legal Studies* 36:S231-S259. **October 20**
- Black, B, D.A. Hyman, and C Silver. 2009. The Effects of "Early Offers" in Medical Malpractice Cases: Evidence from Texas. *Journal of Empirical Legal Studies*, forthcoming. **October 20**

## **VII. Enterprise Liability and Enterprise Insurance**

### **Chapter 12 October 20**

- Abraham, K, and P Weiler. 1994. Enterprise Medical Liability and the Evolution of the American Health-Care System. *Harvard Law Review* 108 (2):381-436. **October 20 (S)**
- Anon. 2008. Fixing Medical Malpractice Through Health Insurer Enterprise Liability. *Harvard Law Review* 121 (4):1192-1214. **October 20**

## **VIII. Juries and Health Courts**

### **Chapter 7 October 27**

- Farber, H, and M White. 1991. Medical Malpractice - an Empirical-Examination of the Litigation Process. *Rand Journal of Economics* 22 (2):199-217. **October 27**
- Peters, P. 2007. Doctors & Juries. *Michigan Law Review* 105 (7):1453-1495. **October 27**
- Studdert, D, M Mello, et al. 2006. Claims, Errors, and Compensation Payments in Medical Malpractice Litigation. *New England Journal of Medicine* 354 (19):2024-2033. **October 27**
- Baker, T. 2005. Reconsidering the Harvard Medical Practice Study Conclusions about the Validity of Medical Malpractice Claims. *Journal of Law, Medicine, and Ethics* 33 (3):501-514. **November 4**
- Mello, M, D Studdert, et al. 2006. "Health Courts" and Accountability for Patient Safety. *Milbank Quarterly* 84 (3):459-492. **November 4**

## **IX. Patient Safety and Medical Malpractice**

### **Chapter 8 November 11**

- Institute of Medicine. 2000. Executive Summary. In *To Err is Human: Building a Safer Health System*. Washington, DC: National Academy Press. **November 11**
- McGlynn, E, J Adams, et al. 2003. The Quality of Health Care Delivered to Adults in the United States. *New England Journal of Medicine* 348 (26):2635-2645. **November 11**

## **X. Medical Malpractice Insurance and Insurance Regulation**

### **Chapter 9 November 18**

Sloan, F, and M Hassan. 1990. Equity and Accuracy in Medical Malpractice Insurance Pricing. *Journal of Health Economics* 9:289-319. **November 18**

**XI. Reinsurance**

Chapter 10 **November 18**

**XII. No-Fault for Medical Injuries**

Chapter 11 **December 4**

Bovbjerg, R, and F Sloan. 1998. No-Fault for Medical Injury. *University of Cincinnati Law Review* 67:53-123. **December 4**

Siegal, G., M. M. Mello and D. M. Studdert. 2008. Adjudicating Severe Birth Injury Claim in Florida and Virginia: The Experience of a Landmark Experiment in Personal Injury Compensation. *American Journal of Law & Medicine*, 34:493-537. **December 4**

Schuck, P (unpublished). Tort Reform, Kiwi Style. **December 4**

Mello, M., 2008. Rationalizing Vaccine Injury Compensation. *Bioethics* 22 (1):32-42. **December 4**

**Make-up Missed Class on October 20: December 11 (Oberlin students only)**