

In-store clinics, 'telemedicine' and the death of windfall malpractice judgments

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Diminishing windfall medical malpractice judgments for inadvertent bumps and bruises might make some lawyers sick.

What's worse, the Affordable Care Act is expected make malpractice litigation even more challenging.

"There will still be errors and there will be compensation, but it won't be anything like what we've seen where patients win millions of dollars," says Jim O'Reilly, a volunteer professor in the University of Cincinnati's College of Law. "For lawyers to better serve their clients, they have to understand the system has changed. If they don't know about it, their client loses."

But O'Reilly offers a remedy in his groundbreaking new textbook.

This week the American Bar Association Press will publish "The New Medical Malpractice" by O'Reilly, an author of dozens of books and articles, and a longtime student of Ohio damages lawsuits. The book shares O'Reilly's insight on the rapidly shifting world of medical malpractice law.

"There was no book – I looked for one – that explained what's happening in health care," O'Reilly says. "That's why most of what's in my book is pioneering, because I talked to the people in Washington, D.C., and asked what they're really doing."

As provisions of the Affordable Care Act are rolled out nationwide, it's estimated that millions of previously uninsured Americans will gain access to coverage. The massive influx of clients is expected to bring a new level of competition among [health insurance](#) providers, potentially driving them to cut costs.

As a result, O'Reilly expects to see fewer local doctor's offices; growing numbers of grocery and convenience stores with on-site clinics staffed by nurses, not doctors; a proliferation of "telemedicine," where patients and doctors interact via video conference technology; and a rise in federally subsidized neighborhood health centers, such as the 46 such clinics operating in Greater Cincinnati and the thousands nationwide.

The changing medical landscape brings exciting ways to deliver medical services, O'Reilly says, but a fair amount of concerns too.

"Telemedicine has great potential but also the possibility for great mischief," O'Reilly says. "We're finding more cases where a nurse is giving the advice and if it's a really significant case, the doctor comes on video and offers an evaluation from a remote location. In that circumstance, we have questions about whether he or she can actually do an appropriate evaluation."

Further complicating things, O'Reilly says many of the newly insured will have "deferred maintenance" issues, or medical problems they have long ignored for various reasons, such as they lack money or sufficient health insurance coverage. These cases are fraught with risk for doctors and could lead to lawsuits for missed diagnosis or the wrong diagnosis.

As O'Reilly explains in his book, the dramatic changes to [health care](#) mean the [medical malpractice](#) field must change too. He says cases where a patient goes to court directly against his or her family practitioner will become more of a rarity.

Instead, patients seeking compensation for medical mistakes will increasingly be pitted against large hospital-based accountable care organizations or federally backed health centers – and lawyers must adapt accordingly. Taking on the federal system in Washington, D.C., or a mega-hospital's cadre of lawyers requires a much different approach than the traditional lawsuit against a neighborhood doctor in local common pleas court.

"The ultimate end point is people injured by mistakes should be compensated by the people accountable for the mistake. I think everybody can agree to that," O'Reilly says. "It's just a much more diverse set of defendants and a much more complicated decision for compensation."

Provided by University of Cincinnati

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