LESSON PLAN - MEDICAL MALPRACTICE

I. Theory of Medical Malpractice

• What is a tort?
• Goals of the tort liability system
  • Compensation
  • deterrence
• The optimal deterrence of injuries
  • Assumptions of the model
  • Definitions of the model
  • The impact of precaution on total (expected) accident costs
    • Expected accident losses
    • Precaution costs
  • Efficient precaution defined
    • The total (expected) accident cost approach
    • MB/MC approach
• The effect of 3 liability rules on levels of precaution taken
  • Definition of the three rules
  • Assumptions
  • The impact of a Negligence rule on precaution
  • The impact of a Strict Liability rule on precaution
  • The impact of a No Liability rule on precaution
• Why not allow private contracting for liability?
  • When the patient has full information
  • When the patient has incomplete or faulty information
• Problems with the theory

II. Empirical Evidence

• Definitions
  • Malpractice frequency, severity and probability
• The medical malpractice “crisis”
  • Contention of the proponents of the belief in a crisis
• What are the roots of the belief that a crisis exists?
  • Data on historical frequency, probability and severity
• Medical Malpractice Reform
  • Types of reforms
  • Popularity of reforms
  • Is malpractice reform warranted?
• Empirical question – Does a malpractice crisis actually exist?
  • Has physician liability actually increased?
  • Was physician liability actually stable historically, as assumed?
    • Historical data on frequency, severity and probability
  • Why has physician liability increased in the past, especially past 3 decades?
    • Theory proposed by proponents of medical malpractice “crisis”
    • What is the evidence?
      • Studies on malpractice negligence
      • Studies on malpractice probability
      • Evidence on jury competence
    • Why has physician liability increased both historically and recently?
      • Insight from theoretical model in Section I above
        • Importance of physician productivity, precaution costs and enforcement costs in determining efficient levels of physician liability (x* in the theoretical model.)
      • Does physician liability behave as predicted by the model?
        • Evidence regarding physician productivity
        • Precaution costs
        • Enforcement costs
        • Contemporary evidence

III. Alternatives to Medical Malpractice

• Private contracting
  • The case for private contracting
  • How would parties contract over liability?
  • Problems
  • Transactions costs

• No-fault insurance plans
  • How does no-fault work?
  • What is the impact of no-fault?
    • On total (expected) accident costs
    • On deterrence
    • On compensation