

## 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
  - Problems with the theory
- Why not allow private contracting for liability?
  - When the patient has full information
  - When the patient has incomplete or faulty information
  - Problems with the analysis

### 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