

April 10, 2007

Contact: Bryan Daniels
Sr. Information Specialist
(573) 882-9144
DanielsBC@missouri.edu

Malpractice Study: Juries Sympathize More with Doctors

MU law professor finds that patients lose nearly half of the cases they were expected to win

COLUMBIA, Mo. – There's a common belief that juries frequently side with patients in lawsuits involving medical malpractice. A legal professor at the University of Missouri-Columbia's School of Law insists that's not the case.

Philip Peters, who is the Ruth L. Hulston Professor of Law at MU, said that contrary to popular belief, juries actually sympathize more with doctors and less with their patients. The determination was made following an extensive review of numerous studies examining malpractice cases from 1989 to 2006. The studies focused on all medical specialties and evaluated expert medical opinions and the merits of malpractice claims. Peters' research involves medical negligence cases from New Jersey, Michigan and North Carolina; cases of national significance; and those involving major insurers.

"The data show that defendants and their hired experts are more successful than plaintiffs and their hired experts at persuading juries to reach verdicts that are contrary to the evidence," Peters said.

He found that:

- Negligence matters and plaintiffs rarely win weak cases. Plaintiffs have more success in toss-up cases and have better outcomes in cases with strong evidence of medical negligence.
- Juries have the ability to recognize weak cases and agree with independent legal experts 80 to 90 percent of the time regarding such cases.
- Doctors are victorious in 50 percent of the cases that independent legal experts expected plaintiffs to win.
- Factors systematically favor medical defendants in the courtroom. Those factors include the defendant's superior resources, the social standing of physicians, social norms against "profiting" by injury and the jury's willingness to give physicians the "benefit of the doubt" when the evidence of negligence is conflicting.

"When the jury is in doubt after hearing the conflicting experts, the benefit of that doubt usually goes to the defendant," he said. "This is the opposite of the assumption made by critics of jury decision making."

An abstract is available online at: http://papers.ssrn.com/sol3/papers.cfm?abstract_id=929474. The complete article, "Doctors & Juries," will be published in the May edition of the *Michigan Law Review*.