

## THE ANATOMY OF A MEDICAL MALPRACTICE VERDICT

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### I. INTRODUCTION

A commonly cited study conducted by the National Academy of Sciences Institute of Medicine in 1999 estimates that between 44,000 and 98,000 Americans die each year due to medical errors in hospitals.<sup>1</sup> The same study estimates that over 300,000 injuries are caused by medical errors each year.<sup>2</sup> A separate study conducted by HealthGrades, Inc., which rates hospitals for insurers and health plans, determined the figures proposed by the National Academy of Sciences Institute of Medicine were far too low, proposing instead that there are more likely around 195,000 annual deaths resulting from medical errors each year.<sup>3</sup> Despite frequent disputes regarding the accuracy of the figures, one can hardly question the fact that an impressive number of injuries and deaths are caused by medical errors in our country each year. Surprisingly, only a fraction of these errors result in claims against healthcare providers and, of those claims that make it to trial, less than one-third result in a plaintiff's verdict.<sup>4</sup>

In light of these statistics, why is there a need for an article focusing on the development of trial strategies for medical malpractice defendants? Despite the surprising success rate of defendants, defense attorneys still face

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1. Linda T. Kohn, Janet M. Corrigan & Molla S. Donaldson, *To Err is Human: Building a Safer Health System*, Natl. Acad. of Sci. Inst. of Med. Stud. 1, 1 (Natl. Acad. Press D.C., Nov. 2000).

2. *Id.*

3. Sen. Comm on Health, Educ., Lab. & Pens., *Medical Liability: New Ideas for Making the System Work Better for Patients*, 109th Cong. 5 (June 22, 2006). This 2004 study of Medicare records included all 50 states' records from years 2000-2002.

4. *Id.* at 6, 8.