

Five Questions With: Patrick C. Barry

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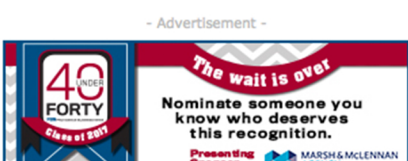
Patrick C. Barry is co-managing attorney with Decof, Decof & Barry, a personal injury law firm in Providence. / COURTESY TOM KUTZ PHOTOGRAPHY

Patrick C. Barry, a co-managing attorney with Decof, Decof & Barry in Providence, is an accomplished trial lawyer and patient safety advocate, winning multiple seven-figure jury verdicts and settlements in a variety of medical negligence and serious injury cases. He served as a member of the Rhode Island Board of Medical Licensure and Discipline, the licensing board for all physicians in the state, from 2005 to 2013. He is also a past president of the Rhode Island Association for Justice, a statewide organization of approximately 400 civil justice attorneys, and a former governor of the American Association for Justice. In 2015, he was named a member of the American Board of Trial Advocates.

Barry has written about and lectured to many professional organizations regarding patient safety, medical negligence and personal injury issues, including, for example, the Rhode Island Bar Association, the Rhode Island Association for Justice, the New Jersey Association for Justice, the Rhode Island Medical Society and Care New England, as well as at many continuing legal education presentations. He is author of a chapter, "Deposing Medical and Technical Experts," in a 2010 MCLE/New England publication, "A Practical Guide to Discovery & Depositions in Rhode Island." Barry shared his perspectives with Providence Business News about the Centers for Disease Control and Prevention's data highlighting the large number of accidental deaths occurring in the United States due to medical errors.

PBN: Since CDC does not collect data on deaths due to medical errors, what data are used to determine that some 250,000 people die each year due to medical errors?

BARRY: The authors of the newest study from The BMJ (formerly known as the British Medical Journal), Dr. Martin Makary and research fellow Michael Daniel, reviewed more than a half-dozen published studies on the rate of medical errors. They have determined the number is closer to 400,000 per year, for in-hospital deaths alone. Their data included findings developed in the landmark Institute of Medicine study from 1999, as well as more recent data focused on in-hospital deaths. The source studies were published by notable groups and well-recognized experts, including the Agency for Healthcare Quality and Research, the U.S. Department of Health and Human Services and physicians Lucian Leape and Christopher Landrigan.



PBN: Is there a way to assess how Rhode Island is doing compared to national statistics or those of our neighboring New England states?

BARRY: There is not yet much 'transparency' in the area of medical errors, here in Rhode Island, regionally or nationally. While there are some basic, publicly accessible sources, they do not provide the best information. Much of the hospital reporting, both internally at the hospital and externally to regulators, is protected by a patchwork of 'peer review' laws that keep much of the information secret. For now, health care consumers are generally limited to resources, such as Medicare's "Hospital Compare" website, www.medicare.gov/hospitalcompare/search.html, or private consumer rights groups like Consumer Reports, www.consumerreports.org/health/doctors-hospitals/hospital-ratings.htm. The national conversation about fatal and harmful medical errors has not progressed to a crisis level, which is where it needs to be.

PBN: Does every death-inducing medical error equate to medical malpractice? Can you talk about the interrelationship between the two?

BARRY: Every death caused by medical error is probably not malpractice, but that is a function of the way the civil justice system works. Medical malpractice victims are, in fact, held to very high standards of proof on all aspects of their claims, both by law and by the aggressive defense of such actions by the health care industry's insurers. I suspect that many responsible and reasonable medical professionals would feel there has been medical negligence in many cases that could not be successfully pursued in the courts. Simply put, some portion of the errors that would be included in this study likely would not result in a medical malpractice case, for a variety of reasons. For example, consider if a very ill person with no close family members or loved ones dies prematurely due to a medical error. That situation may not support the efforts required to bring a malpractice claim, given a lack of compensable damages. Too, many patients and families remain completely unaware that an error even occurred, and no lawsuit is ever pursued. A 2006 study by the New England Journal of Medicine and Harvard School of Public School found: "The great majority of patients who sustain a medical injury as a result of negligence do not sue."

PBN: What were the most frequent medical errors occurring in Rhode Island during your tenure on the Rhode Island Board of Medical Licensure and Discipline and what actions, if any, have been taken to try to reduce them?

BARRY: During my time on the Rhode Island Board of Medical Licensure and Discipline, we were regularly confronted with prescription and pharmaceutical problems. These ranged from relatively innocent, yet seriously deficient, office practices to outright fraudulent 'diversion' of powerful narcotics. Other common problems included miscommunication errors, which have been commonly found in all of these studies, as well. These include well-known systemic errors, such as the exchange of information at a patient 'hand-off' from one provider to another, as well as rigid adherence to electronic systems with no meaningful opportunity for common sense to intervene. The recently reported case of a teenage boy in California who received 39 times the appropriate dosage of an antibiotic is such an example.

PBN: What are the most significant changes that the medical profession should adopt to reduce the likelihood and frequency of death-inducing medical errors and what are the most important recommendations for patients and their families to avoid being impacted by medical errors?"

BARRY: I personally feel the medical industry needs to become much more transparent and open when errors occur. The patient and family are actually a valuable resource to turn to in a post-incident review, because they can offer their own insights into what went wrong. The industry also needs to fully empower all providers to speak up and intervene when something seems to be going wrong. As for patients, the most important thing they can do is to be their own advocate. Be informed and knowledgeable about their medical conditions and treatments, and speak up when appropriate. Patients need to ask questions, and confirm – not just trust – that things are being done correctly.



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