

# CHICAGO LAWYER

## MED-MAL MATTERS

**D**iagnostic errors, the failure to timely or correctly diagnose a patient's malady, or to communicate the diagnosis properly, are frequent fodder for medical negligence lawsuits. They are widely recognized contributors to patient injury and death. Estimates of the rate of diagnostic error have varied widely. Until recently, few if any studies have used a rigorous, structured approach to detecting them, estimating their frequency and the harms they cause.

According to a recent study published in January's JAMA Internal Medicine ("Diagnostic Errors in Hospitalized Adults Who Died or Were Transferred to Intensive Care") diagnostic errors are "common," involving up to a quarter of patients who die in the hospital or are transferred to an intensive care unit and are associated with significant patient harm.

The study involved a retrospective multi-center cohort study of hospitalized adult patients who died or were transferred to an ICU after the second day of admission. Researchers evaluated thousands of records and used a rigorous process to assess the frequency, causes, and resulting harm of diagnostic errors among those patients. The informed consent requirement was waived in part, the authors noted with deadpan style, because many of the participants would be unable to provide consent because they died.

The primary results showed that diagnostic error, defined as a missed opportunity to make a correct or timely diagnosis based on the available evidence regardless of patient harm, included patient harm related to the error. The study's definition of a causal connection between an error and a harm like death – contributed to or resulted in the patient's death – tracks closely with proximate cause language in the Illinois Pattern Jury Instruction.

According to the study, out of 2,428 included patients at 29 hospitals who died or transferred to an ICU, 550 (almost 25%) were misdiagnosed. Identified patterns or examples of misdiagnosis included errors related to testing (choosing the right test, at the right time, and interpreting it correctly) and assessment (recognizing complications or revisiting a differential diagnosis when presented with new



## MISTAKES ADD UP

Studies showing mounting diagnostic errors

By **THOMAS A. DEMETRIO** and **KENNETH T. LUMB**

information). Of those misdiagnosed patients, more than 77% suffered harm or death caused by the misdiagnosis. According to the authors, diagnostic errors in the population studied are common, harmful and preventable.

Another recent study ("Burden of serious harms from diagnostic error in the USA"), published by BMJ Quality & Safety in July 2023 contains important new information by providing epidemiologically valid estimates of the overall incidence of serious harm from diagnostic error across all care settings. The study provides the first national estimate of permanent morbidity and mortality from misdiagnosis by combining prior results with rigorous estimates of disease incidence.

The results are striking; 795,000 Americans die or are permanently disabled every year across all care settings "because dangerous diseases are misdiagnosed." The results suggest diagnostic error is the single largest source of serious injury from medical negligence. Moreover, just 15 diseases, spread across three broader categories (vascular events, infections, and cancer – the Big Three in patient safety parlance) account for more than 50% of the total serious injuries. The 15 most

misdiagnosed diseases include stroke, sepsis, thromboembolism, aortic dissection, heart attack, pneumonia, meningitis, spinal abscess. It also includes five types of cancer; lung, breast, colorectal, prostate and melanoma.

The authors note that meaningful patient safety progress could be made by "addressing" a relatively small number of dangerous diseases. Reducing preventable error for just the 15 most misdiagnosed diseases would prevent about 200,000 Americans each year from dying or being permanently disabled.

When studies like these are published, they cause a splash within the popular press and among patient safety practitioners. But when a diagnostic error of one of the 15 diseases results in a lawsuit, the attorneys will be more interested in what the hospital had done to "address" these findings. [CL](#)

**Thomas A. Demetrio** is a founding partner of Corboy & Demetrio, representing victims of medical malpractice and personal injury. He can be reached at [tad@corboydemetrio.com](mailto:tad@corboydemetrio.com)

**Kenneth T. Lumb** is a medical-malpractice attorney and managing partner at Corboy & Demetrio. He can be reached at [ktl@corboydemetrio.com](mailto:ktl@corboydemetrio.com)