Article Summary

The Jaded Cliché of 'Defensive Medical Practice': From Magically Convincing to Empirically (Un)convincing?

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The central claim of 'defensive medicine', that proposed reforms or threats of new or broader avenues of legal liability will cause doctors to practise defensively, exposing patients to the unnecessary risk of harm, and consuming scarce resources which could be better used elsewhere, has become a cliché and has lost much of its rhetorical force in UK jurisprudence. Despite a substantial body of research appearing to validate the existence of harmful defensive medicine, arguments based on the risk of defensive practice triggered by litigation more broadly have declined in potency, particularly since the Supreme Court's judgment in *Robinson v Chief Constable for West Yorkshire*. The first half of this paper charts and deconstructs the declining influence of the defensive practice argument in court judgments. In the second half, the author reflects on the forensic value of existing research into defensive medicine and whether it might usefully contribute to the assessment of defensive practice argumentation in medical negligence cases. In doing so, the paper draws from studies of defensive practice in medicine conducted in the UK to date, and observations from interviews with medical practitioners representing lived experience of defensive practice.