



# Swedish system: Right to compensation for damage caused by health care

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## Should the medical injury *insurance system* mainly...

- Be based on the *patients right* to compensation for medical injuries ?  
= the Scandinavian solution and ONIAM

...or

- Be based on the aim of *protecting the doctors* against claims from patients?



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## Should medical injury insurance premiums mainly...

- Be used for *compensation to patients* ?

...or

- Be used to *pay lawyers* and insurance administration?



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## Should claims data/information mainly...

- Be *used for learning* to avoid that the same kind of injury would happen again?

...or

- Be *used to punish the doctor* disciplinary or economically?



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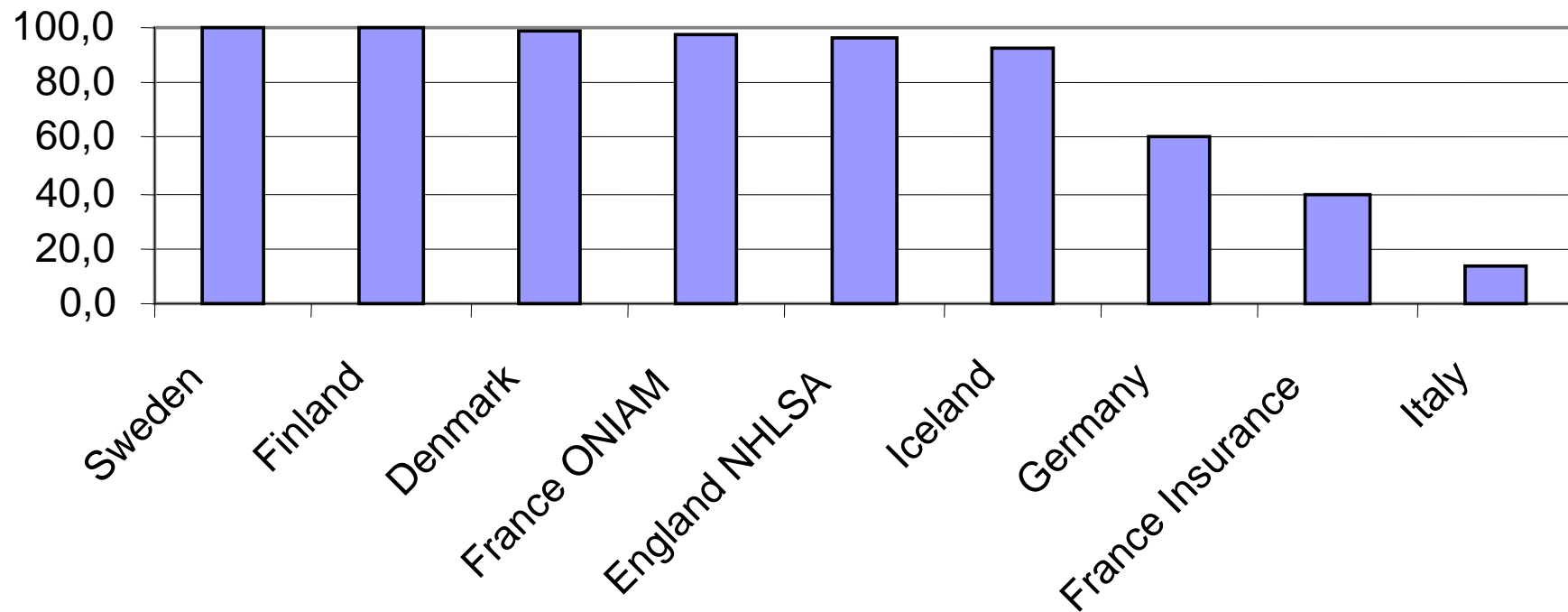
## Scandinavian systems

- Special legislation based on patients rights
- Only **avoidable injuries** compensated
- No blame
- **Administrative claims handling = no court**



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## Percentage of claims solved outside court





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## Same compensation as...

- Motor accidents
- Workplace accidents
- Tort Law except max and min compensation
  
- We pay for pain and suffering



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## Fault – no fault systems

- **Real no fault** : France ONIAM for specific disabilities over 24%
- **"No fault"**: Scandinavia.  
But that is wrong – only avoidable injuries compensated = **no blame**
- **Fault**: Italy, Germany, France Insurance. Portugal, Switzerland, Lithuania, Georgia, Moldavia, UK, Slovak Republic and Ukraine



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## Administrative vs. Court systems

- **Administrative systems**

- Scandinavian countries
- (France ONIAM)

- **Court systems**

- Italy, Germany, France Insurance, Portugal, Switzerland, Lithuania, Georgia, Moldavia, United Kingdom, Slovak Republic and Ukraine



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## What are the differences?

- **Administrative system**
  - Special legislation
  - A right for the patient to get compensation
  - Avoidable injuries
- **Court system**
  - Normal tort law
  - The patient has to prove that the doctor was negligent



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## What is the effect of the liability system for the doctor ?

- **Administrative system**
- **No blame for the doctor** = objective ground = Avoidable
- No risk for disciplinary actions
- The doctor should help the patient to claim
- **Court system**
- **Doctor sued personally** = need to prove “not guilty”
- Risk for disciplinary actions
- Insurance will protect the doctor



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## What are the differences - burden of proof?

- **Administrative system**
  - Avoidable by an experienced specialist
  - *Burden of proof 51%*
  - Medical adviser and claims handler decides
  - No economic risk for the patient or the doctor
- **Court system**
  - Violating or not following professional standard
  - *Burden of proof 70%?*
  - Court decides
  - Economic risk for the patient and the doctor



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## If you are not satisfied...

10 000 claims

1 000 to Patient Claims Panel

100 approved

10-15 court cases

1-2 approved



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## To learn - so it does not happen again?

- **Administrative system**

- Promotes reporting of injuries – no blame
- Easier to do Root Cause Analysis and find out failure of routines and systems rather than individual failures

- **Court system**

- Risk for not reporting – risk for court procedure
- Focused on the failure of the individual doctor even if the Root Cause was the routines and systems
- Information from agreements out of court not public



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## Will "no blame" lead to Moral hazard?

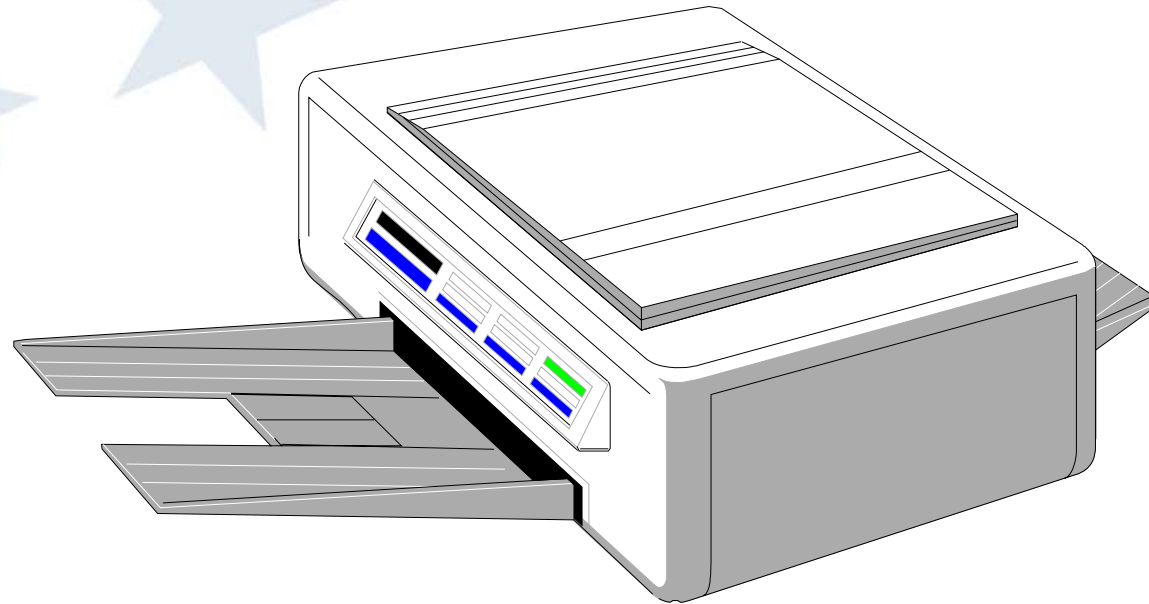
- Doing mistakes is part of human nature
- You can change working conditions, so the risk for mistakes will be reduced, mistakes are seen earlier and being handled before damage on patients.

(James Reason)



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## What is the most common mistake with this machine?



How to prevent it?



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## Ask why, not who?



Looking for scapegoats  
is a very efficient way of  
killing more patients...

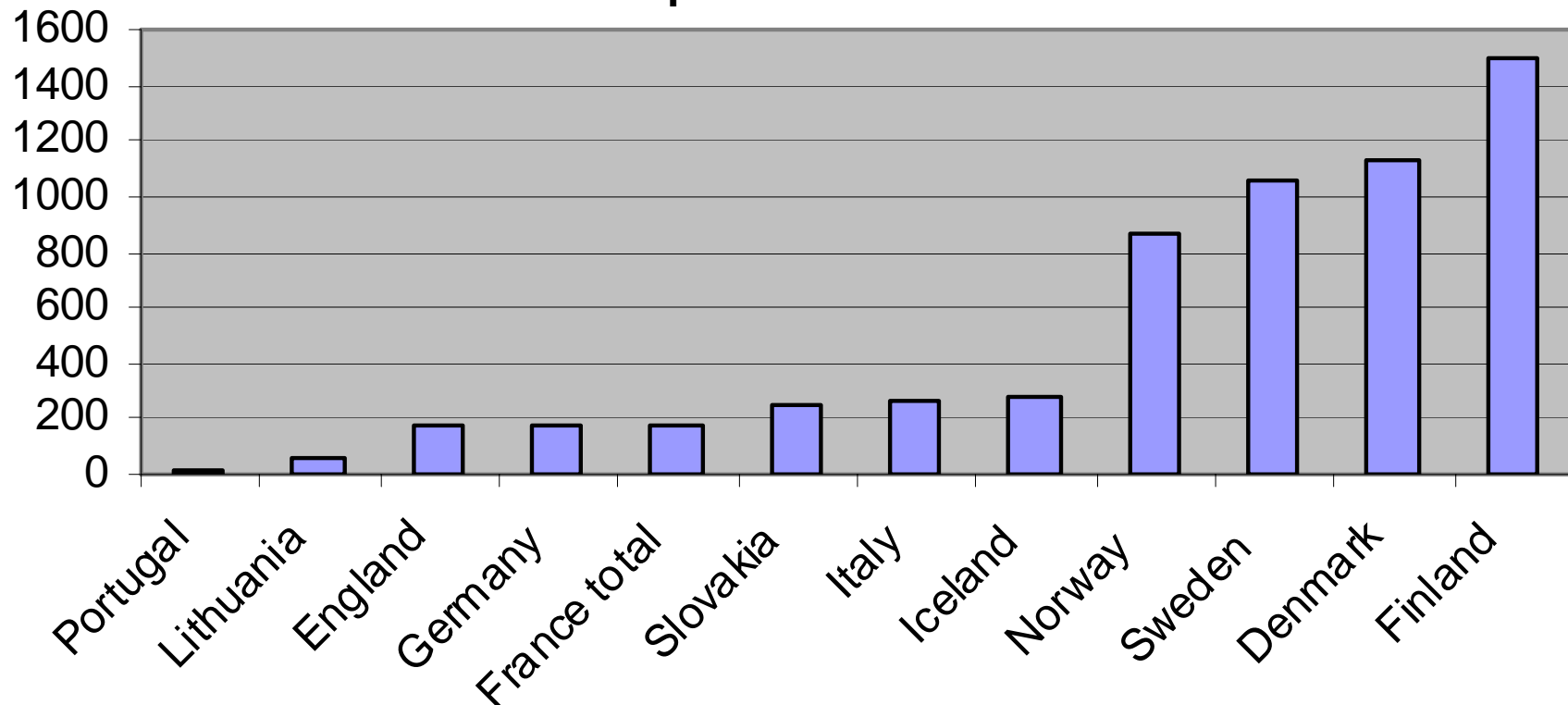
(Sir Liam Donaldson)



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## Much higher number of claims in “administrative” countries

Claims per 1 million inhabitants

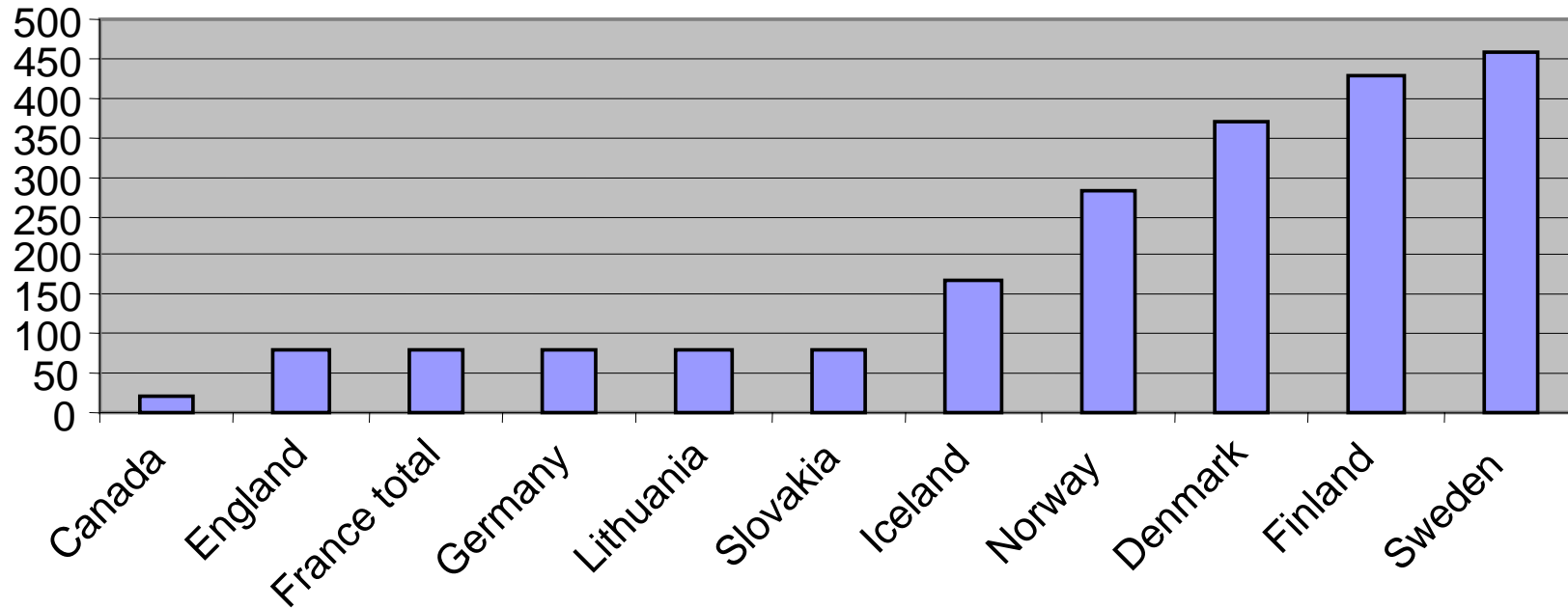




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# Much higher number of **accepted** claims in “administrative” countries

Paid claims per 1 million inhabitants

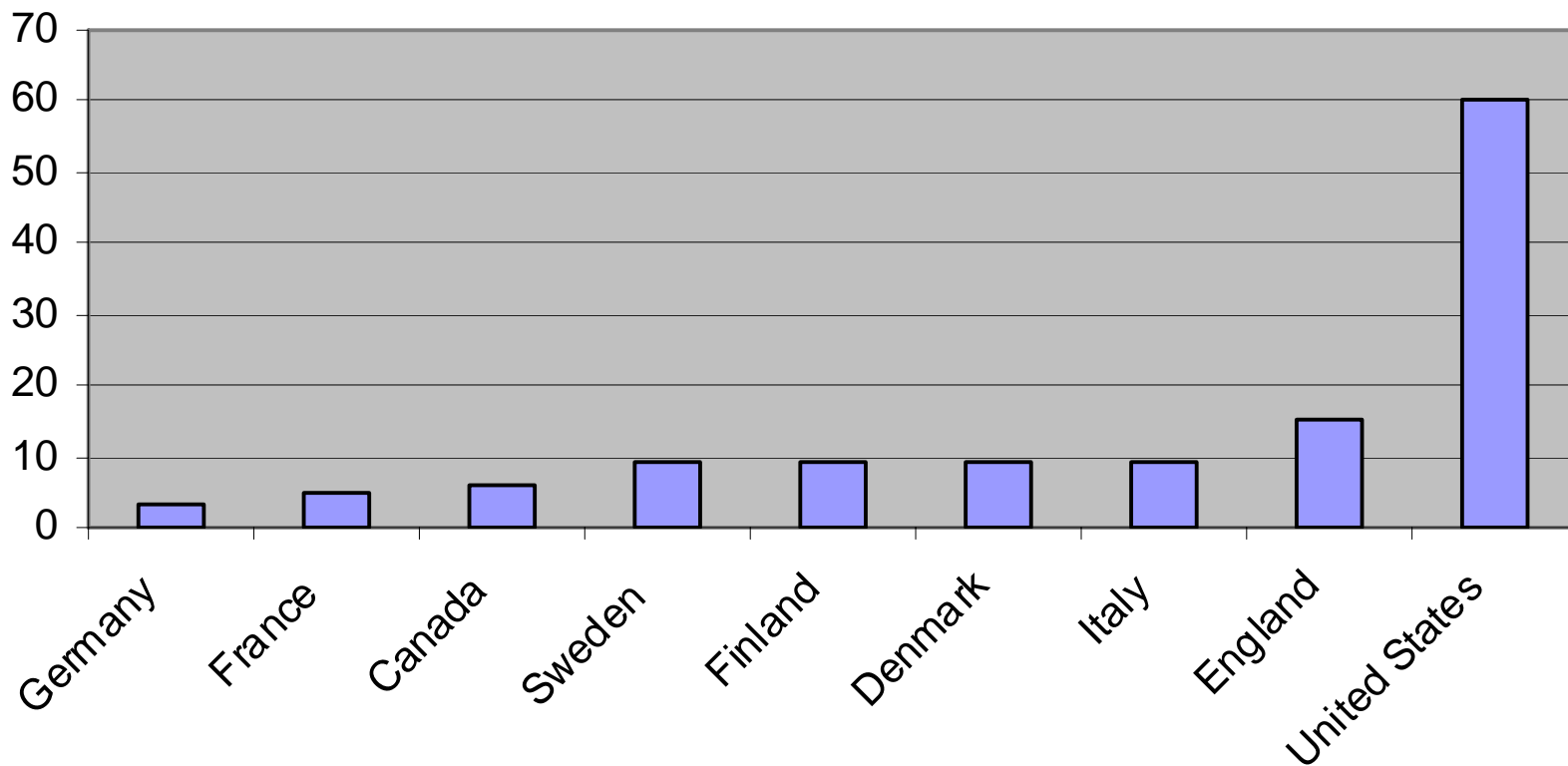




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# Cost per inhabitant for medical injuries

Cost in Euro per inhabitant





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## Why is the cost not higher in administrative countries?

- Many small claims



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## Who gets the premium?

	Patients	Adm+laywers
US	28 %	72 %
Sweden	> 80%	<20%



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## Cost for processing claims

**Administrative  
Claims procedure**

**Court  
procedure**

=

=



**20 times  
more  
expensive**



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## Complimentary to the welfare system

- Sick leave compensation 80%
- Early retirement comp 64%
- Costs for health care because of the injury paid by public system
- Maximum compensation to one patient = 900 000 €



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## The Swedish model

- Based on the patients right to compensation
- No blame for doctors – no fear for reporting – claims could be used for learning
- Using “avoidable injury” eliminates the need of court procedures
- The administrative model saves time and money



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## Proposal for a system that would enforce the patients' right

- Special legislation based on patients rights
- Enterprise liability instead of personal liability.
- No blame for the doctors - Separate economic compensation from disciplinary actions
- Compensate avoidable injuries
- Administrative system instead of going to court
- Deductibles/self risks
- Information from claims for learning



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## We think it is better to...

- Give compensation to patients than to legal procedures
- Enforce the patients right to compensation instead of protecting the doctors from claims
- Using data from claims to avoid the same kind of injuries to happen again instead of punishing the doctors



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## Study on 177 avoidable brain damaged babies

- CTG-interpretation
- Oxytocin
- Non optimal mode of delivery
- Resuscitation



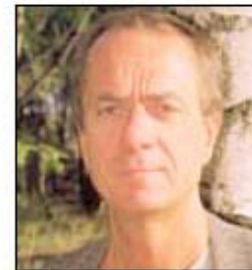
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## The medical professions take responsibility for change

- Obstetricians
- Neonatologists
- Midwives



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**STELLAN HÅKANSSON**, neonatalsektionen, Svenska barnläkarföreningen



**INGELA WIKLUND**, Svenska barnmorskeförbundet



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## The medical professions take responsibility for change

- Self assessment tool with 20 questions:  
How do you secure that your staff can interpret CTG?  
How ....Oxytocin?  
How ...
- Peer review
- Plan for improvement



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## Economic incentives from the insurance company

- Paid scientific study:  
one researcher > 3 years
- 5 000 € to departments when they start
- 15 000 € to departments when they have fulfilled most of improvement plan