

**SPECIAL
EDITION**

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Your rights are at grave risk

America's civil justice system—and your personal legal rights—are under attack. Corporate leadership constantly pressures our national policymakers in the House and Senate to enact measures to limit your access to the courts. If, as a consumer, you are injured by defective products or are a victim of fraud or deception by companies such as Enron and Arthur Andersen, they want to limit your rights.

What may affect you and your family most directly, however, is legislation that would limit the rights of injured patients that will soon go to the Senate. In March, the U.S. House narrowly passed H.R. 5, an outrageous insurance-industry-backed bill that would drastically limit the rights of many patients. These include those most seriously injured by medical malpractice, elderly victims of nursing-home abuse, and anyone harmed by defective medical products or prescription drugs.

This bill would preempt state law and inflict a wide range of limits—including a \$250,000 one-size-fits-all cap on noneconomic damages—for injured patients in health-care-related liability actions.

We believe that policymakers restricting your personal access to our courts and limiting how much money you can recover in a legitimate malpractice suit will hurt you if you are a victim of malpractice. It won't deter other health-care industry workers from being careless in the future, either.

An outrageous insurance-industry-backed bill would drastically limit the rights of patients.

Two cases

Here is how medical malpractice legislation would affect two recent, highly publicized cases.

LINDA McDOUGAL



Linda McDougal, 46, a U.S. Navy veteran, accountant, wife, and mother of three from Woodville, Wisconsin, was advised after a routine mammogram in May 2002 that she should have a biopsy. In May, her doctor advised her that tests showed she had a severe,

aggressive form of breast cancer and recommended a double mastectomy if she wanted to live. She agreed to the surgery. After the surgery, she was told that her cancer diagnosis had been wrong.

In a speech advocating limits on the legal rights of medical malpractice victims like Linda McDougal, President Bush blamed high medical malpractice insurance premiums on "lousy juries." McDougal responded, "President Bush wants to put through, rather rapidly, a cap on medical malpractice [compensation]. His intent is to harm me, not to make doctors accountable for their actions. Don't penalize the patients. Don't penalize the victims."

JESICA SANTILLAN

Jesica Santillan was a young girl who died after her doctors transplanted organs of the wrong blood type into her body. Jesica, like most children, was not a wage earner. Her medical expenses were paid by generous donors. So virtually all of her family's damages would be noneconomic. Because of the noneconomic damages cap under the medical malpractice legislation, politicians who never heard the evidence of how Jesica was taken from her family would prescribe a one-size-fits-all "value" on her life.

Oppose limits on patients' rights.

Myths vs. truths about medical malpractice

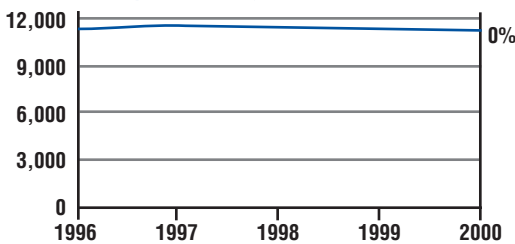
Over the past several years, newspaper front pages and television news reports have created some powerful impressions about medical malpractice. Doctors are complaining about high medical malpractice premiums and going out on strike.

What's really going on? Here are some false myths we've been told and the real truth behind them.

MYTH 1. Malpractice lawsuit cases and awards are exploding THE TRUTH

Not only are medical malpractice suits against doctors, hospitals, HMOs, nursing homes, pharmaceutical manufacturers, makers of medical devices, medications, and health-care-industry providers not increasing, they've been flat over the past several years.

MEDICAL MALPRACTICE FILINGS HAVE FLATLINED Medical Malpractice Filings in 14 States, 1996-2000



National Center for State Courts, Courts Statistics Project, 2002.

According to a 2002 Courts Statistics Project conducted by the National Center for State Courts, data collected from 14 states showed there was no significant change in the number of medical malpractice claim cases between 1996 and 2000. Although researchers noted a 2.5 percent increase in the study's initial year, claims slowly and steadily flatlined over the remainder of the study.

Jury awards are flat, too

Despite questionable popular media reports, the hard facts show that malpractice awards are rarely excessive. The median malpractice payout for 2000 was \$125,000, according to the National Practitioner's Databank. Furthermore, not only has there been no "explosion" in medical malpractice payouts in the past 30 years, but constant-dollar expenditures have remained exceptionally constant and nearly level since 1985.

MYTH 2. America's court and jury systems are causing an unheard-of increase in medical malpractice premiums THE TRUTH

Medical malpractice premiums charged by insurers fail to correspond with the number of medical malpractice cases or payouts over the past 30 years, as the following chart shows.

Here's what the chart says:

- Operating income as a percentage of earnings rises and falls with unusual regularity, reacting to the state of the American economy.

- Today's medical malpractice "crisis" is, in reality, an insurance industry profit-cycle problem.

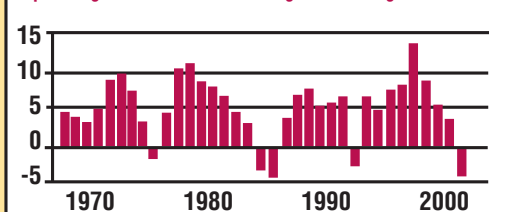
Many experts also think that the insurance industry's profit problem has been compounded by several other factors. Insurers made poor investments in the past decade, reducing their return on investment. Also, underwriters underestimated payout projections for a series of hurricanes, floods, and other disasters, which also cut into profits.

All insurance premiums are increasing

Insurance premiums are increasing in all industries, based on inflation, the 9/11 attacks, our poorly performing economy, and many other factors. Industry experts interviewed said:

- Multifamily real-estate insurers needed to raise rates 60 percent for two years to catch up with losses.
- In July 2001, Papa John's Pizza added a \$1 delivery fee at its 30 Miami-Dade outlets to respond to skyrocketing insurance premiums.
- In 2002, Tulsa, Oklahoma's Airport Authority approved an annual insurance premium twice that of the previous year's, with less property covered.

IS THE INSURANCE CYCLE JUST A MYTH? Operating Income As A Percentage Of Earnings: 1967-2001

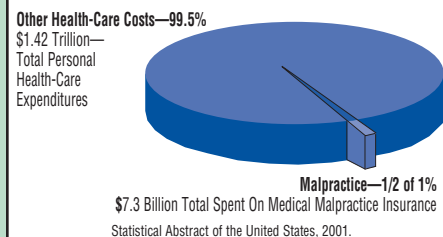


Source: Best's Aggregates and Averages-Property and Casualty, 2002

MYTH 3. Out-of-control lawsuits and overly sympathetic juries are responsible for medical malpractice premium increases THE TRUTH

First of all, as the chart below shows, only about one-half of one percent of all U.S. health-care costs are paid for by malpractice insurance in 2001. Malpractice insurance is a minor component of medical inflation costs.

IS MALPRACTICE DRIVING MEDICAL INFLATION? Health-Care Costs, United States—2001



- The median malpractice payouts have remained flat since the mid-1980s.
- Perhaps most important, insurers themselves admit they do not settle frivolous lawsuits.

According to a Kaiser Family Foundation and Health Care Financing Administration survey, key factors causing rising medical malpractice costs included spending for a number of areas, including 44 percent for malpractice insurance and 44 percent for hospital profits. (See the chart at right.)

Lawsuits and insurance rates

Medical malpractice lawsuits do not increase insurance rates. Most patients and their survivors never even learn the results of a lawsuit. The silence protects many bad and negligent doctors and medical malpractice insurers. There is no reason to presume the statistics have improved. The statistics have indicated that only one of eight instances of malpractice is settled, and only 26 percent of the time.

MYTH 4. Placing a \$250,000 cap on compensation to malpractice victims for their noneconomic injuries will reduce medical malpractice premiums

THE TRUTH

Caps do not work

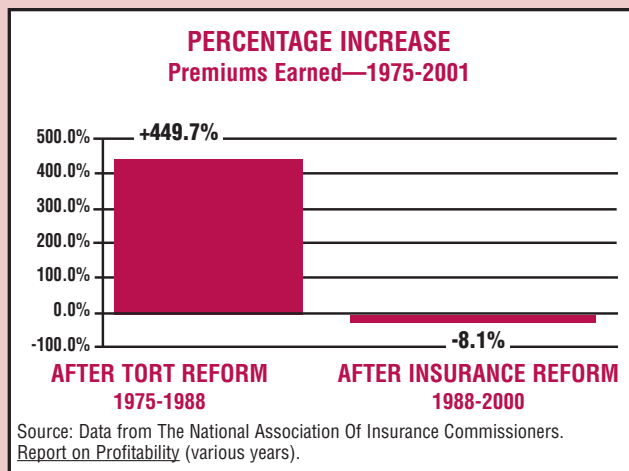
■ Caps don't guarantee lower medical malpractice rates for doctors. In Missouri, after legislators placed caps on malpractice claims, claims decreased and the cost per claim went down. Despite that, physicians' malpractice insurance rates continue to spiral up and out of control.

■ Insurers would reduce rates if caps were successful. Nevada placed caps on noneconomic damages last summer. Insurers announced they had no intention of reducing doctors' malpractice premiums. In fact, Nevada's premiums have increased an average of 40 percent, and one insurer just announced a 94 percent rate increase.

■ States with severe caps face huge increases in medical malpractice premiums.

California's cap lesson

California's 1976 Medical Injury Compensation Reform Act (MICRA) shows that damage caps have no impact on health-care costs or doctors' insurance premiums. Although California



limits noneconomic damages to \$250,000, the actual medical malpractice premium doctors pay is \$27,570—eight percent higher than the average of all states without caps on noneconomic damages. In fact, even though California has the most restrictive medical malpractice cap, doctors' insurance premiums increased by 450 percent during the first dozen years following cap enactment. Only voter enactment of insurance reform in 1988

helped stabilize malpractice insurance rates. Since 1998, California premiums have jumped 37 percent, compared to a national average of 5.7 percent.

MYTH 5. When caps are put into effect, patients are compensated fairly for noneconomic damages from medical malpractice

THE TRUTH

Although most people think noneconomic damages mean only "pain and suffering," serious harm is not easily measured in terms of money. Think of patients who may suffer blindness, physical disfigurement, loss of fertility, loss of sexual function, loss of a limb, loss of mobility, or the loss of a child or loved one.

Caps discriminate

Noneconomic caps discriminate against patients injured by malpractice who have little or no income, particularly children, women, and seniors, since more of their compensation is made up of the noneconomic damages taken away by caps.

"I miss my daddy"

A California resident lost her husband in December 2000 after doctors failed to diagnose

pneumonia. Their error led to a blood infection and septic shock. The hospital, understaffed to cut costs, performed a blood culture but never recorded test results in his medical chart. The lost information was recovered after his death.

His wife said of medical malpractice, "It's not about politics. It's about an 8-year-old who says every night, 'I miss my daddy.'"



Malpractice juries granting outrageous awards

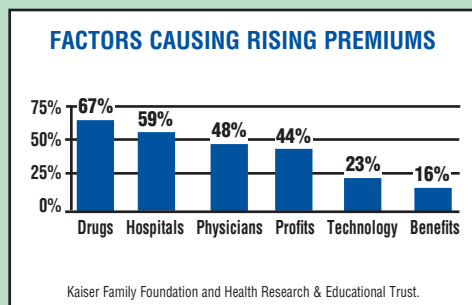
was spent on medical

Health Research & Educational malpractice premiums in 2000 percent for insurance-company

nce rates—for a lot of reasons.

ey were victimized by medical negligence. Peer review and a conspiracy of medical institutions. Many cases are settled quietly out of court.

proved since a 1990 Harvard Medical Practice Study Group research paper e resulted in a claim. And of suits filed and tried, another study says plaintiffs win



MYTH 6. Physicians are innocent victims of the medical malpractice situation

THE TRUTH

If only it were so. Another deep-down problem with medical malpractice is that it occurs too often. It's the eighth-leading cause of death in America, killing more people than AIDS, breast cancer, or automobile accidents. Reports show that up to 98,000 patients die—and many more are injured—in U.S. hospitals each year as a result of preventable medical errors.

A West Virginia study found that just 40 doctors were responsible for more than a quarter of the 2,300 cases of medical malpractice reported to the West Virginia Board of Medicine between 1993 and 2001. A recent analysis of medical-negligence records in Kentucky showed that from 1992 through 2001, only 16 percent of the state's doctors were responsible for 100 percent of the medical malpractice. Another study shows 5 percent of doctors nationwide account for 55 percent of malpractice.

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***Oppose the federal bill that will
seriously limit the rights of patients
injured by medical malpractice.***

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Oppose limits on patients' rights

Medical malpractice is a patient being injured because he or she failed to receive proper medical care. Our firm fights to give patients and their families the right to hold the health-care industry accountable if health-care workers injure them through malpractice.

Policymakers modeled federal medical malpractice legislation on the draconian 1975 California malpractice law, now overwhelmingly opposed by the state's residents. Only the federal proposal exceeds California's law in limiting patients' rights and protecting the insurance industry. It will apply to all nursing homes, medical devices, medications, HMOs, and health insurers, and will effectively eliminate punitive damages, limit noneconomic damages, and do away with many other important patient and consumer protections.

Good reasons to oppose limits on patients' rights

- ✓ Limits on patients' rights won't reduce the cost of medical malpractice insurance.
- ✓ Arbitrary and discriminatory caps on noneconomic damages hurt those patients with the most serious injuries.
- ✓ Medical malpractice limits also apply to product liability actions against makers and marketers of defective drugs and medical devices.
- ✓ Nursing-home operators' liability will be reduced.
- ✓ Medical malpractice limitations may apply to actions against health insurers and HMOs.
- ✓ Noneconomic damage caps are unfair to women since they shamefully devalue the worth of homemakers and stay-at-home moms, as well as others with little or no income.
- ✓ Punitive damages for even the most egregious behaviors would be virtually unrecoverable.

Help defeat the antipatient safety bill in the U.S. Senate

WHAT CAN YOU DO?

Learn what the issues really are

■ See the Association of Trial Lawyers of America (ATLA) Web site at www.atla.org. The "Action Network" has the latest medical malpractice and insurance news and developments. ATLA is dedicated to protecting patients and America's civil justice system, and to ensuring that wrongdoers don't limit American families' legal rights.

Take action

The fight against the medical malpractice legislation now goes to the U.S. Senate, and we encourage you to take action immediately!

■ At the ATLA Web site, use the easy-to-fill-in form to immediately e-mail your U.S. Senators and Representative to voice your opposition to limits on patients' rights—and urge your elected officials to oppose them, too.

■ Spread the word about corporate America's attempts to reduce wrongdoers' liability when their actions cause injury and death to innocent American children and families. Tell, phone, or e-mail your relatives, friends, and neighbors, and tell them to join you in taking action to stop the antipatient bill from being passed. Use the ATLA Web site to send an online postcard to your friends or clients, and encourage them to get active!