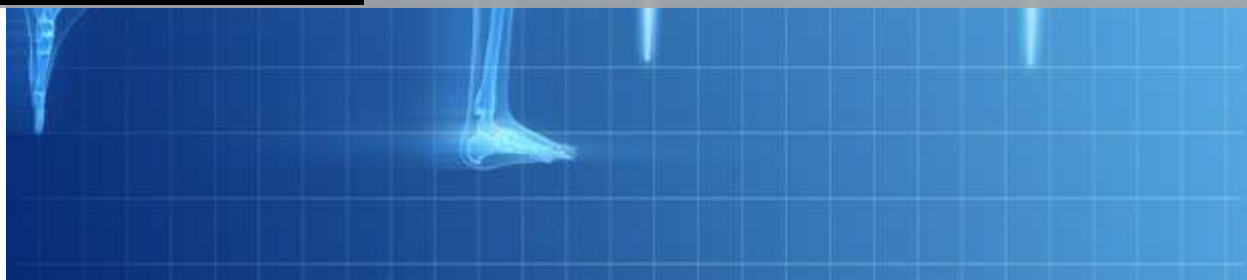




FEDERAL GOVERNMENT
DATA DEMONSTRATES
THAT NEW YORK'S
MEDICAL MALPRACTICE
INSURANCE HIKES ARE
CONTRARY TO
PAYMENT TRENDS

CONTRAININDICATION



ENDORSED BY:

**CENTER FOR JUSTICE & DEMOCRACY, CENTER FOR MEDICAL
CONSUMERS, CONSUMERS UNION, NYPIRG, PULSE OF NEW YORK**

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CONTRAININDICATION:

Federal Government Data Demonstrates that New York's Medical Malpractice Insurance Hikes Are Contrary to Payment Trends ***Executive Summary***

In recent years, New York's medical community has decried hikes in medical malpractice insurance premiums. Describing the premium increases as "devastating," the medical lobby has claimed that the costs of liability coverage are driving doctors out of New York State. At least one doctor group has also charged that "a wildly unpredictable medical liability adjudication system"¹ is the driving force in increasing premiums. The result, they say, is that New Yorkers have increasing difficulty in accessing care from the so-called "high risk" specialists, such as obstetricians and neurosurgeons.

But are these claims true? According to the federal governmental data reviewed for this report, the answer is a resounding "NO."

This report's overall finding is that, based on the *actual* litigation payments made by the state's doctors over a number of years, New York's malpractice system appears to be remarkably consistent, stable and fair. In fact, NPDB data shows that payouts have been reducing since 2006.

Federal law requires that all medical malpractice payment information be reported to the government's National Practitioner Data Bank (NPDB). The NPDB's Public Use Data File is the only publicly-available, comprehensive malpractice database in the nation.

While the NPDB is prohibited by law from releasing the names of individual doctors who have paid malpractice payments, it does release aggregated information about those payments. This report reviewed the information specific to New York State.

¹ Medical Society of the State of New York, Legislative Program 2009, p. 3.

Findings:

- **The aggregate amount paid to injured patients in New York for malpractice judgments and settlements has dropped dramatically since 2006.** Despite the rhetoric, and increases in doctors' insurance premiums, the NPDB data shows that for the past few years New York's aggregate of malpractice payouts dropped from \$822 million in 2006 to \$743 million in 2008, or roughly 10 percent. In terms of malpractice payouts alone, it's contraindicated for New York to raise premiums when payouts are dropping.
- **When viewed over a longer period of time, malpractice payments in New York have risen at roughly the same rate as inflation from 1993 through 2008.** The NPDB data clearly shows that over the past decade and a half (1993 – 2008) New York's medical malpractice payout experience, after adjustment for inflation, has remained stable.
- **The frequency of malpractice payments has remained flat, even though there has been a dramatic increase in the number of doctors practicing in New York.** The number of malpractice payments made has hovered around 2,000 annually. During that period of time, the number of doctors practicing in New York State has increased by over 20 percent, from 51,193 doctors in 1995 to 62,770 in 2008.
- **A small minority of doctors are responsible for the lion's share of malpractice payments.** According to the NPDB, during the period 1992 through 2008 the number of New York doctors who made 3 or more malpractice payments was equivalent to only 6.6% of the total number of doctors who practiced in New York in 2008. Yet they are responsible for nearly half (49.9%) of all payments made during that period.
- **Malpractice payment amounts appear related to serious injuries or deaths.** Death, catastrophic and permanent injuries received the most compensation from malpractice payments, both in frequency and dollars.
- **Despite claims that doctors are fleeing the state, New York State has the third highest per capita number of doctors in the nation. In addition the number of doctors working in New York is growing at a significantly higher rate than the state's overall population.** From 1995 through 2008 the number of active physicians practicing in New York increased over 20%. During the period 1995 through 2008, the state's population grew a mere 6%.

Contraindication:

Federal Data Refutes New York Malpractice "Crisis"

In addition, New York has one of the nation's highest ratios of OB-GYNs (the high-risk "poster" specialists often featured in the medical lobby's attack on the legal system) per number of women of childbearing age.

- **Medical malpractice claims have remained stagnant over the past dozen years.** Despite the hyper-inflated rhetoric depicting a litigation "crisis" in New York, the number of medical malpractice cases filed has been roughly the same for the past dozen years.

Recommendations:

What is clear is that the medical malpractice "diagnosis" made by organized medicine and echoed by most policymakers is at odds with the reality as represented in the nation's only comprehensive database of malpractice payments. While we are sympathetic to the rising cost of malpractice insurance experienced by New York doctors, as well as the overall high cost of coverage in our state, the increases appear to be the result of factors *other* than payments from the tort system. Moreover, rising malpractice insurance premiums has not had a demonstrable effect on the number of doctors practicing in the state.

- **Policymakers must demand that independent actuaries should conduct a forensic review of insurers' malpractice premium-setting practices.**
- **The state Insurance Department should be given expanded authority over malpractice insurance carrier rate setting and outside actuarial experts should re-examine whether the current reserve requirements can be justified in light of actual payout experience.**
- **The state Health Department, through the Office of Professional Medical Conduct should proactively review the practice history of doctors who have more than 3 payouts or more in the past ten years.** When appropriate, the Board should order a doctor to undergo a competency assessment.
- **Future discussions on how to reduce inflation in doctors' malpractice insurance rates should focus on the best way to reduce lawsuits – improving patient safety so as to avoid preventable injuries.** Serious consideration should also be given to a requirement that all physicians periodically demonstrate maintenance of competency in the scope of their current practice as a condition of recertification.

Medical Malpractice Payments Have Dropped Significantly Over the Past Three Years

Doctors in New York State have decried rapidly increasing malpractice insurance premiums. Lobbyists for some doctors have claimed that malpractice insurance premiums have increased “55 to 80%” over the past five years. These statements posit the “randomness and unpredictability” of the litigation system and contend that “these costs have continued their rapid rise.”²

But are these claims true? Unfortunately, the malpractice insurance system is shrouded in secrecy and it is virtually impossible to meaningfully access critical information to verify the medical lobby’s claims. However, the federal government *requires* that all malpractice payment information must be reported to its National Practitioner Data Bank (NPDB).

The NPDB is prohibited from releasing doctor-specific malpractice information, but does disclose statistical information. Such information can be obtained on a state-specific basis.

For those interested in examining the status of medical malpractice payments in New York, the NPDB provides a treasure trove of information. A review of New York’s experience over the past fifteen years reveals a system that is not unpredictable, but is, in fact, quite stable. Payments are not spiraling out-of-control, quite the contrary. The total number of payments made on an annual basis has remained remarkably stable. Also, during the last few years the dollar amount of malpractice payments made has decreased.

This first analysis examines the state’s malpractice payment history. The next section examines the amount paid out when adjusted for inflation.

² Medical Society of the State of New York, Legislative Program 2009, p. 1.

**National Practitioner Data Bank³:
The Total Amount Paid for Medical Malpractice in New York State
1993 – 2008**

Year	Total Payments Made	Total Number of Payments (rank)
1993	\$515,494,950	2419 (3)
1994	\$563,105,050	2419 (3) ⁴
1995	\$421,001,500	2010 (15)
1996	\$464,228,800	2125 (13)
1997	\$496,561,550	2194 (12)
1998	\$546,708,850	2319 (9)
1999	\$578,362,500	2371 (8)
2000	\$662,860,200	2631 (2)
2001	\$712,857,300	2679 (1)
2002	\$668,996,350	2257 (10)
2003	\$747,286,950	2390 (6)
2004	\$821,477,250	2373 (7)
2005	\$733,087,400	2214 (11)
2006	\$822,670,650	2417 (5)
2007	\$753,217,950	2026 (14)
2008	\$743,497,550	1882 (16)

³ See Methodology section for detailed description of how we used the database.

⁴ In all charts, if there is a “tie” in ranking it is listed as such. Subsequent ranks start by skipping a number. In this case, two years “tied” for third place, then we skipped to the fifth ranked year, (there is no fourth) 2006. All following charts will follow the same pattern.

Over The Last Fifteen Years, Doctors' Malpractice Payouts Have Increased At The Same Rate As Inflation

The medical lobby claims New York State is in “crisis” due to rapidly rising malpractice premiums that are the result of a liability system that is out of control. While there has been an increase in the aggregate value of malpractice payouts over the past fifteen years, as the chart below demonstrates, the increase appears to be consistent with the overall level of consumer price inflation:

- The amount that New York State physicians paid out for medical malpractice claims remained stable from 1993 through 2008, after adjusting for inflation.

Actual medical malpractice payout compared with projected inflation-adjusted medical malpractice payout for years 1993 and 2008⁵

Year	Malpractice payouts
1993 <i>Actual</i> Physicians' Malpractice Payouts	\$515,494,950
2008 <i>Projected</i> Malpractice Payouts adjusted for inflation with 1993 as base	\$768,080,420
2008 <i>Actual</i> Physicians' Malpractice Payouts	\$743,497,550

The actual amount paid out in 2008 is remarkably consistent with payouts made in 1993, when adjusted for inflation. The federal data makes it clear that New York's malpractice payments have remained the constant for many years.

⁵ National Practitioner Data Bank. For the “projected” category, using the 1993 actual figures as a base, the authors calculated how inflation would have increased the 1993 costs through 2008. The NPDB recommends using the inflation rate for the consumer price index. The NPDB recommends use of that adjustment index since medical malpractice payments cover a wide range of services. Inflation source: Bureau of Labor Statistics, Consumer Price Index for All Urban Consumers 1993 – 2008. Calculations by authors. Totals rounded off to the nearest dollar.

Very Few Doctors Are Responsible for the Overwhelming Number of Medical Malpractice Payments in New York State

New York State has one of the highest per capita number of doctors in the nation. A small minority of those doctors ever makes a malpractice payment and a tiny percentage is responsible for more than half of all payouts over the past 15 years.

Between 1992 and 2008, 4,094 doctors made three or more payments. For comparison purposes, that figure represents only 6.6 percent of the 62,270 of doctors practicing in-state in 2008. (NOTE: *The 6.6 percent figure is based on the total number of doctors who made a payout over the past 17 years compared to the number of in-state doctors practicing in 2008 alone. Obviously, there were more doctors practicing during that entire period, but no reliable data exists. Thus, the 6.6 percent figure is very conservative and the real percentage is likely to be much smaller.*)

That small share represents nearly half (49.9 percent) of the amount of medical malpractice payments made during that time.

**National Practitioner Data Bank:
Number of Doctors Who Have Made Medical Malpractice Payments
New York 1992 – 2008**

Number of Payment Reports	Number of Doctors Who Made Payments	Total Number of Payments	Sum of These Payments	Percent of Total Dollars Paid Out Statewide
Total	23,031	46,202	\$11,102,317,100	
1	14,104	14104	\$3,258,299,150	29.35%
2	4,222	8444	\$2,305,207,200	20.76%
3	1,888	5664	\$1,623,028,800	14.62%
4	901	3604	\$1,076,279,850	9.69%
5 through 9	1,108	6,818	\$2,172,574,400	19.57%
10 or more	197	3,122	\$666,927,700	6.01%

Serious Injuries Top The List of Payouts

One claim of opponents of New York’s malpractice system is that it is random and unpredictable. Contrary to those claims, the NPDB reports that those patients who have suffered the most – either through permanent injuries or deaths – are the categories that have received the highest average malpractice payments.

A common-sense conclusion is that, in fact, New York’s system is quite predictable – those injured the worst received the largest awards. It is a system that makes sense and is rational and fair.

National Practitioner Data Bank: Patient Outcomes in Cases Involving Medical Malpractice Payments, New York 2004-2008

Outcome	Total Value of Payments Paid (rank)	Average Payment (rank)	Number of Payments (rank)
Death	\$900,597,000 (1)	\$415,022 (4)	2,170 (1)
Quadriplegic, Brain Damage, Lifelong Care	\$419,336,250 (5)	\$950,876 (1)	441 (7)
Major Permanent Injury	\$552,095,000 (3)	\$665,175 (2)	830 (6)
Significant Permanent Injury	\$805,780,250 (2)	\$493,738 (3)	1,632 (4)
Minor Permanent Injury	\$502,063,050 (4)	\$268,627 (6)	1,869 (2)
Major Temporary Injury	\$297,437,650 (6)	\$248,071 (7)	1,199 (5)
Minor Temporary Injury	\$196,213,050 (7)	\$110,543 (8)	1,775 (3)
Insignificant Injury	\$14,204,900 (9)	\$41,174 (10)	345 (8)
Emotional Injury Only	\$6,674,550 (10)	\$62,967 (9)	106 (10)
Undetermined	\$90,642,850 (8)	\$277,195 (5)	327 (9)

The Number of Doctors in New York State Has Increased Significantly Despite Relatively High Malpractice Premiums

For years, opponents of the current malpractice system have not only argued that the system is unfair and out-of-control, but that it will inevitably reduce the number of doctors available. One group has gone so far as to claim that New York is facing “growing physician shortages.”⁶

If there are shortages, they are well-hidden. Since 1995, the number of doctors practicing in New York has swelled – and increased at a rate faster than the growth in the state’s population.

New York State’s Increasing Number of Doctors 1995 – 2008 and Compared to Population Growth⁷

Year	Number of Licensed Doctors	Doctors practicing in-state	Percent change in practicing doctors over previous year	Percent change in overall New York State population ⁸
1997	69,340	53,409		
1998	70,180	54,926	2.8	0.4
1999	71,010	55,732	1.5	0.4
2000	72,290	55,531	-0.4	1.5
2001	72,920	56,995	2.6	0.6
2002	74,063	56,995	0.0	0.4
2003	75,067	59,581	4.5	0.2
2004	76,843	59,581	0.0	0.2
2005	78,306	63,427	6.5	0.1
2006	79,692	61,931	-2.4	0.3
2007	81,641	65,644	6.0	0.0
Percentage increase			22.9	3.9

⁶ Medical Society of the State of New York, NYS Medical Society Says Rate Increase Bodes Ill for New York Patients, *News Release*, July 2, 2007.

⁷ The Federation of State Medical Boards of the United States, Inc. “Summary of Board Actions.”

⁸ New York State Department of Health:
http://www.health.state.ny.us/nysdoh/vital_statistics/index.htm.

New York State Has One of The Highest Number Of Doctors In The Nation

Compared with the rest of the nation, in terms of the number of doctors *per capita*, New York State does extremely well. According to data published by the American Medical Association, New York boasts of having the **third** highest *per capita* number of doctors in the nation. New York's *per capita* number dramatically exceeds California, a state identified by the medical lobby as a model for the nation in terms of malpractice laws.

Ironically, New York also has one of the largest numbers of OB-GYNs, often identified as a specialty most at risk due to a so-called litigation crisis.

American Medical Association: State-By-State Comparison of the Number of Doctors 2007⁹

State	Number of Doctors	Number of Doctors per 100,000 population (1-10 rank)	Number of OB-GYNs	Number of OB-GYNs per 10,000 women of childbearing age (1-10 rank) ¹⁰
Alabama	11,239	243	568	6
Alaska	1,717	251	84	6
Arizona	15,710	248	711	6
Arkansas	6,548	231	268	5
California	112,776	309	5,012	6
Colorado	14,515	299	675	7
Connecticut	14,753	421 (5)	709	10 (1)
Delaware	2,456	284	98	6
Florida	55,037	302	2,264	6
Georgia	23,239	243	1,390	7

⁹ American Medical Association, *Physician Characteristics and Distribution in the US*. 2009 edition. See Tables 3.7 and 6.17.

¹⁰ U.S. Census Bureau: <http://www.census.gov/popest/states/asrh/SC-EST2008-02.html>. Table 2: Annual Estimates of the Resident Population by Sex and Age for Alaska: April 1, 2000 to July 1, 2008 (SC-EST2008-02-02). We used July 1, 2007 data in order to conform with the OB-GYN statistics made available by the AMA. Census Bureau data obtained in April 2009. Calculations by authors.

Hawaii	4,665	363 (7)	253	10 (1)
Idaho	2,993	200	134	4
Illinois	39,986	311	1,853	7
Indiana	15,478	244	703	5
Iowa	6,536	219	208	4
Kansas	7,180	259	292	5
Kentucky	11,024	260	530	6
Louisiana	12,741	297	687	8 (8)
Maine	4,305	327	171	7
Maryland	26,402	470 (2)	1,156	10 (1)
Massachusetts	33,313	517 (1)	1,120	8 (8)
Michigan	28,356	282	1,362	7
Minnesota	17,178	330 (10)	627	6
Mississippi	5,961	204	327	5
Missouri	15,968	272	728	6
Montana	2,580	269	112	6
Nebraska	4,942	278	199	6
Nevada	5,591	218	284	5
New Hampshire	4,232	322	194	7
New Jersey	30,595	352 (8)	1,531	9 (4)
New Mexico	5,533	281	226	6
New York	85,304	442 (3)	3,765	9 (4)
North Carolina	26,046	287	1,286	7
North Dakota	1,769	277	51	4
Ohio	34,472	301	1,497	6
Oklahoma	7,245	200	332	5
Oregon	12,048	321	537	7
Pennsylvania	43,257	348 (8)	1,708	7
Rhode Island	4,430	419 (5)	204	9 (4)
South Carolina	11,514	261	581	6
South Dakota	2,012	253	74	5
Tennessee	18,137	295	908	7
Texas	56,531	236	3,005	6
Utah	6,269	237	286	5
Vermont	2,735	440 (3)	113	9 (4)
Virginia	24,162	313	1,241	8 (8)
Washington	20,353	315	777	6
West Virginia	4,760	263	201	6
Wisconsin	16,485	294	641	6
Wyoming	1,165	223	55	5

Licensing of New Physicians in New York Has Been Steady

New York State continues to experience increases in all categories of newly licensed physicians. The number of newly licensed physicians was higher in 2007 (4,343) compared with 1998 (3,593).

**New York State Education Department:
The Number of Newly Licensed Doctors 1998 – 2008¹¹**

Year	Newly Licensed Doctors in New York
1998	3,593
1999	3,671
2000	3,491
2001	3,496
2002	3,656
2003	3,674
2004	3,908
2005	3,773
2006	4,170
2007	4,343
Percentage increase	21%

¹¹ New York State Education Department. Current year is available at www.op.nysed.gov/medcounts.htm.

**Comparison Of The Numbers Of Doctors Practicing, By
County, 1/1/2003 VS. 1/7/2008¹²**

County	Number		County	Number		County	Number	
	2008	2003		2008	2003		2008	2003
Albany	1,469	1,388	Jefferson	213	203	Saratoga	416	308
Allegany	39	43	Kings	4,548	4,246	Schenectady	427	433
Bronx	1,706	1,795	Lewis	23	18	Schoharie	19	24
Broome	582	582	Livingston	65	54	Schuyler	22	24
Cattaraugus	108	117	Madison	96	104	Seneca	16	20
Cayuga	96	95	Monroe	2,825	2,620	Steuben	175	174
Chautauqua	184	208	Montgomery	79	81	St. Lawrence	152	166
Chemung	251	247	Nassau	8,359	7,831	Suffolk	4,393	3,976
Chenango	56	55	New York	15,998	13,954	Sullivan	82	93
Clinton	204	180	Niagara	274	256	Tioga	41	39
Columbia	111	113	Oneida	524	531	Tompkins	235	208
Cortland	62	58	Onondaga	1,726	1,644	Ulster	338	322
Delaware	36	49	Ontario	265	235	Warren	246	219
Dutchess	809	722	Orange	824	727	Washington	38	46
Erie	2,796	2,760	Orleans	26	32	Wayne	75	82
Essex	36	47	Oswego	104	105	Westchester	6,127	5,899
Franklin	92	94	Otsego	295	250	Wyoming	38	47
Fulton	70	66	Putnam	230	216	Yates	30	31
Genesee	69	72	Queens	4,535	4,450	NYS TOTAL	65,644	61,249
Greene	46	46	Rensselaer	281	261	OTHER US	15,794	13,286
Hamilton	4	3	Richmond	1,381	1,333	NON-US	203	235
Herkimer	43	51	Rockland	1,234	1,196	TOTAL	81,641	74,770

¹² New York State Education Department. Current year is available at www.op.nysed.gov/medcounts.htm.

Medical Malpractice Litigation Filings Have Been Stagnant

The New York State Unified Court System's Office of Court Administration (OCA) keeps track of medical malpractice cases filed across the state. The OCA offers statistical information on "Requests for Judicial Intervention," the number of cases submitted to the court after a complaint has been filed and "Notes of Issue," which is the notice given when a case is ready to go to trial.

There has been very little change in the number of cases in both categories over the past dozen years.

New York State Office of Court Administration: Requests for Judicial Interventions in New York, 1996 – 2008 Medical Malpractice¹³

Year	Requests for Judicial Intervention Total
1996	4,423
1997	4,460
1998	4,318
1999	4,235
2000	4,150
2001	4,338
2002	4,403
2003	4,467
2004	4,434
2005	4,270
2006	4,140
2007	4,271
2008	4,182

¹³ NYPIRG submitted an e-mail request for the above information to the New York State Office of Court Administration. Data was received on June 1, 2009.

**New York State Office of Court Administration:
Requests for Notes of Issue in New York, 1996 – 2008
Medical Malpractice¹⁴**

Year	Requests for Notes of Issue Total
1996	2,633
1997	2,790
1998	3,044
1999	3,147
2000	3,059
2001	3,499
2002	3,182
2003	3,093
2004	2,876
2005	2,807
2006	2,901
2007	2,723
2008	2,865

¹⁴ NYS OCA, Ibid.

Background: Current New York State Law

Over the years New York State policymakers have debated the issues of medical malpractice and patient safety. The most sweeping changes to medical malpractice law were made during the 1985 legislative session; at a time of another purported malpractice “crisis” and additional changes were made in 1986. In summary, the changes included the following:¹⁵

- **Periodic payment of judgments.** Under this change, unless the parties agree otherwise, malpractice payments for future damages that are in excess of \$250,000 are made periodically, rather than at one time. Future pain and suffering losses are paid out over ten years.
- **Collateral source offsets.** The 1985 Medical Malpractice Reform Act extended the collateral source reduction rule to future economic damages that will be replaced or reimbursed.¹⁶
- **New penalties for “frivolous” legal maneuvers by either the defense or the plaintiff.**
- **A state fund subsidizing the cost of malpractice premiums for doctors.** In 1985 the state created an “excess” medical malpractice coverage fund. This fund covers physician malpractice payments up to \$1 million above a now \$1.3 million threshold.¹⁷ This is in essence taxpayer financed “umbrella” insurance. It was intended when established in 1985 to help hold down premium increases due to what was then projected to be dramatic increases in the size of payouts.
- **A new standard for appellate review.** The changes of the mid-1980s changed the appellate standard for altering the award considered on appeal. The old standard was that the court could only change an award if it “shocks the conscience of the court.”

¹⁵ Chapter 294 of the laws of 1985.

¹⁶ In 1975, the legislature enacted a statute that permitted a jury in a medical malpractice action to consider evidence that a plaintiff had already been compensated for a particular item’s economic damages by a source other than the defendant (“collateral source”). In 1981, the statute was amended to require a court to reduce an economic damage award in a medical malpractice action by collateral source payments that had been made.

¹⁷ Further amended by Chapter 266 of the laws of 1986. Excess limit increased by Chapter 1 of the laws of 2002.

The current standard is that the award “deviates from that which would be reasonable compensation.”¹⁸

- **Expert Witnesses.** Changes made in 1985 require a party to disclose the qualifications and the subject matter of any expert testifying at trial.
- **Statute of limitations.** A change in 1975 created the current two and one-half year limit on the amount of time a legal action can be commenced after a medical injury occurred. The statute of limitations has three exceptions: (1) children are given a ten year limit; (2) if an injury occurs during a continuous course of treatment by a particular physician, an action can be brought at any time during treatment or within two and one-half years after treatment ends; and (3) if the injury is caused by a “foreign body,” in which case an action can be brought when the foreign body (for example, a surgical clamp) is discovered or should have been discovered by a reasonable person.^{19 20}

¹⁸ Chapter 682, of the laws of 1986.

¹⁹ Chapter 476, of the laws of 1975.

²⁰ Currently, injured patients must make a legal claim against the responsible physician or hospital within two and one-half years of the date the injury occurred. Other than the three specific exceptions detailed above, if a patient doesn't find out about a medical mistake until years later, New York law could block any legal action against the physician.

Recommendations

What is quite clear from the NPDB is that New York's medical malpractice litigation system is rational, predictable and has not resulted in payouts beyond inflationary growth. However, doctors are facing mushrooming increases in malpractice insurance premiums. Why? If litigation payments are only increasing at the rate of inflation, what is driving double-digit increases in insurance?

On this question the NPDB provides no answers. It is a question that must be answered, publicly. Moreover, there are ways for the state to help reduce malpractice premiums – by requiring higher quality health care. Below are our recommendations:

- **Policymakers must demand that independent actuaries should conduct a forensic review of insurers' malpractice premium-setting practices.**
- **The state Health Department must aggressively review doctors who have more than three or more payouts in the past ten years.**
- **Policymakers must make protecting patient safety their number one priority.** *One key measure would be the creation of a system of periodic recertification of physicians.* Both the IOM²¹ and the State Health Department²² have recommended that physicians be routinely recertified to assure that they continue to be able to practice as competent professionals. Over time, physicians may see some of their skills erode and it is difficult to keep current with the latest medical research and advances in technology. In an effort to identify these physicians *before* a patient gets harmed, a system of recertification based on competency assessment is needed.

²¹ National Academy of Sciences' Institute of Medicine, To Err is Human: Building A Better Health Care System, November 1999, p. 10.

²² New York State Department of Health, Report of the New York State Advisory Committee on Physician Recredentialing: Phase One General Principles, Proposed Process, Recommendations, January 1988.

Methodology And Notes On The Uses Of The National Practitioner Data Bank Public Use Data File

The information referenced to the National Practitioner Data Bank (NPDB) Public Use Data File was obtained through the U.S. Department of Health and Human Services, Health Resources and Services Administration, Bureau of Health Professions, Division of Practitioner Data Banks. It was downloaded on 2/27/2009 from <http://www.npdb-hipdb.hrsa.gov/>.

Federal law requires all insurers to report medical malpractice payments to the NPDB – an entity that is part of the U.S. Department of Health and Human Services. In an effort to ensure that states, hospitals and other health facilities had access to physicians' disciplinary and malpractice histories, the U.S. Congress created the NPDB in the mid-1980s.²³ The physician-specific information contained in the NPDB is not available to the public, but non-identifiable, aggregate data is available to researchers. We reviewed New York's aggregate data from the NPDB in order to evaluate organized medicine's portrayal of a medical malpractice system spinning out of control.

A word about the NPDB; the General Accounting Office has criticized the NPDB for failing to receive reports of all malpractice payments made by physicians across the nation. While we fully recognize the limitations in using the NPDB, there is no other publicly available information about physicians' medical malpractice experiences.²⁴ We believe using the NPDB data to identify *trends* in malpractice insurance in New York State provides a useful and valid yardstick.

The database contained several variables which appeared in the NPDB's Data File in several fashions. Whenever this occurred, we followed the NPDB's recommendation for the most accurate way to examine the data.

²³ General Accounting Office, National Practitioner Data Bank: Major Improvements are Needed to Enhance Data Bank's Reliability, GAO-01-130, November 2000.

²⁴ GAO, *Ibid.*

For example, three kinds of physicians' locations are reported in the NPDB: the practitioner's home, his or her place of work, and licensee's state. The NPDB recommends that researchers use "a State variable which equals work State if a work State value was reported and home State if no work State was reported." The numbers in our analysis reflect the use of this methodology.

Additionally, three kinds of years appear. "ORIGYEAR", which is the year the record was entered into the data bank, is a "reasonable substitute for year of Judgment or Settlement, which is an optional field" was used to determine the year of payments.

Numbers entered in the database are rounded. For example, all payments between \$101 and \$500 appear in the NPDB as \$300. Thus, none of the numbers in this report are exact.