

## Bad Medicine

By David Morris, AlterNet. Posted January 10, 2005.

Attacking patients or their lawyers won't cure what ails the health care industry. Insurance reform is a better place to start.

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"One of the major cost drivers in the delivery of health care are these junk and frivolous lawsuits," President Bush has told the American people, offering up his proposals to cap non-economic damages to patients injured by medical negligence. Here are seven facts that prove him wrong:

1. Insurance rates do not vary with the amount of claims paid out as much as with the amount of investment income that comes in.

"During the 1990s, insurers competed vigorously for medical malpractice business, and several factors, including high investment returns, permitted them to offer (artificially low) prices ... " according to the Government Accountability Office. When stock prices and bond interest rates fell, insurer income plummeted, prompting companies to increase rates to make up for the losses. Even the Congressional Budget Office has said that at least half of the rate increases from 2000 to 2002 were prompted by declining investment returns. The other half were a result of major companies, like the Saint Paul Company (now Saint Paul Travelers), withdrawing from the malpractice insurance business altogether because of the investment return declines. Thousands of physicians were forced to scramble for alternatives. Many charged exorbitant prices. The insurance crises in some states, like West Virginia, Nevada and Pennsylvania, may largely be attributed to Saint Paul Company's withdrawal.

2. Medical malpractice insurance accounts for less than 2 percent of overall health care spending. Even that percentage is falling because insurance rates have been rising at less than half the rate of increase in overall health costs.

3. Since 1996, the number of malpractice claims has been flat. The average payout has increased only slightly. According to the National Practitioners Data Bank (NPDB), a government service that tracks malpractice claims, verdicts and settlements, the median payout for medical malpractice claims rose from \$100,000 in 1997 to \$135,000 in 2001. The size of the award closely tracked the severity of the injury.

4. Only 1 of 8 patients who suffer injury due to medical negligence ever file a malpractice claim.

5. Caps on medical malpractice awards for pain and suffering have not resulted in decreased malpractice insurance rates. In the first 10 years after California imposed a \$250,000 cap in 1975, state rate increases were the same as the national average. It was only after Proposition 103 passed in 1988 that insurance rates in California began to decline in comparison to those in other parts of the country. The reason? Proposition 103 instituted insurance reforms, not "tort reform." It disallowed unnecessary insurance costs like bloated executive salaries and excessive expenses and it required insurers to open their books to justify rate increases.

6. A tiny fraction of doctors account for the majority of malpractice awards. From September 1990 to September 2002, only 5.1 percent of doctors paid two or more malpractice awards. But these doctors accounted for 54 percent of all payouts.

7. State medical boards are reluctant to discipline incompetent doctors. One study found that only 1 out of 6 doctors who had five or more malpractice payouts had been disciplined.

In 1986, the New York state legislature commissioned an interdisciplinary team of physicians, attorneys, economists, statisticians and social research experts to diagnose the problem of soaring liability insurance premiums. Their conclusion? "(F)inding fault with the tort system is easy; what is difficult is identifying an alternative that, on balance will do better."

The medical insurance system needs fixing. One remedy is to make insurance companies more accountable. Eight of the 10 states with the lowest medical malpractice insurance rates require an approval process before the companies can raise rates. Another remedy is to require insurance companies to broaden the risk pool by combining doctor specialties so that individual disciplines, like gynecology, where mistakes can be devastating, are not disproportionately burdened.

The medical system needs fixing too. A horrifying statistic in a March 2000 report by the prestigious Institute of Medicine testifies to the problem. Between 44,000 and 98,000 people die each year as a result of medical mistakes. One reason may be the astonishing number of hours – up to 120 hours a week – interns and residents work, including 36-hour shifts for several weeks at a time. Sleeplessness breeds mistakes. A bill introduced in Congress last year would limit the resident workweek to 80 hours.

Studies have also found a higher risk of dying in hospitals where nurses have heavier workloads. One analysis concluded that every additional patient per nurse results in a 7 percent increase in both patient mortality and deaths following complications.

There is a problem in the medical industry. But the facts indicate that it is not caused by the patients or their legal representatives.