

HOW HAS MEDICAL MALPRACTICE REFORM AFFECTED NEVADANS?

Prepared By:



As you are aware, the insurance industry has perpetrated a hoax on you, the voters of Nevada, in convincing you to vote into law “medical malpractice reform.” You were promised that this reform would lower malpractice insurance premiums, and that doctors would not flee the State, once the cap of \$350,000 on your noneconomic damages was put in place. Instead of this desired effect, Nevada has become a haven for doctors who are less skilled, and who – if they practiced in other states – would live in fear of lawsuits – not because of lawsuit happy, litigious people, but because they know that they are not as skilled as they could be, or as up to date on their techniques as other doctors in other states. The cap has, for better or worse, attracted doctors who flee from *other* states that refuse to compromise the safety of their citizens by enacting caps similar to the one in Nevada.

With hundreds of thousands of people dying each year from medical errors, the ability of patients who have been injured to hold wrongdoers accountable serves as a key incentive for providing the best care possible. Put simply, bad doctors fear lawsuits, and it makes them more careful.

The insurance industry that convinced you to vote for the caps had one goal – to increase their profits. Corporations are not in business to help people, unless they can do so for a profit. There is nothing in your law that requires the insurance industry to return any cost-savings to the doctors – the savings would only add to the already bloated bottom lines of insurance companies.

Capping non-economic damages is an arbitrary, one-size-fits-all approach that ignores the degree of negligence or harm perpetrated on the patient. An individual left in a vegetative state, in need of constant monitoring, or one left in excruciating pain that prohibits any social interaction, or one who has been diagnosed with a disease that can kill or forever change the patient’s lifestyle would be eligible to receive no more than a person with insignificant injuries. How much is it worth to you to never be able to have intimate relations again, without worry of spreading disease to your loved one?

Expensive insurance premiums are the result of insurance industry price gouging not awards in medical malpractice cases. A study commissioned by the Center for Justice and Democracy established that insurance premiums more than doubled between 2000 and 2004 even though claims pay-outs remained essentially flat – proving that malpractice insurance premium increases are tied to insurance industry greed, not claims pay-outs or lawsuits.

Doctors are not leaving the profession as a result of malpractice suits or rising malpractice insurance premiums and in fact, the number has increased substantially. The AMA’s own statistics show the number of doctors has increased by more than 40 percent since 1990. Shockingly, some doctors may leave states that do not have caps at the urging of their insurance carriers, because those doctors habitually commit malpractice.

Acts of medical malpractice are not an unusual event. An Institute of Medicine study determined that between 44,000 and 98,000 Americans die every year as the result of preventable medical errors. Non-economic damage awards serve as an incentive for doctors and hospitals to provide the highest quality of care to avoid potentially expensive and time consuming litigation.

Don't Just Take Our Word For This, Here Are the Facts:

- **The Congressional Budget Office: Malpractice Costs Amount to Less than 2 Percent of Health Care Spending.** According to the Congressional Budget Office, malpractice costs amount to “less than 2 percent of overall health care spending. Thus, even a reduction of 25 percent to 30 percent in malpractice costs would lower health care costs by only about 0.4 percent to 0.5 percent, and the likely effect on health insurance premiums would be comparably small.” [“Limiting Tort Liability for Medical Malpractice,” Congressional Budget Office, 1/08/04]
- **AMA Data: The Number of Physicians Up More than 40 Percent Since 1990.** According to the most recent statistics from the American Medical Association, the number of physicians in the United States is increasing:
 - ✓ **The Overall Number of Physicians in the United States has Increased.** According to data from the American Medical Association, the number of physicians in the United States is up nearly 47 percent since 1990 – from 615,421 to 902,053 in 2005. [*Physician Characteristics and Distribution in the U.S.*, American Medical Association, 2007 edition, p.8;
- **Payouts in Medical Malpractice Cases Have Dropped Over Last Four Years; The Number of Payments Over \$1 Million Has Dropped 56 Percent Since 1991.** According to a 2005 study by Public Citizen, malpractice payouts have remained flat for more than a decade and have actually dropped over the last four years. Among the finding of the study, which looked medical malpractice payout trends between 1991 and 2004:
 - ✓ The number of malpractice payments paid on behalf of doctors fell 13.6 percent between 2001 and 2004.
 - ✓ Adjusted for inflation, the median payment from judgments grew from \$125,000 in 1991 to \$146,000 in 2004 – only a 1.2 percent average annual increase.
 - ✓ The percentage of payments over \$1 million dropped from 2.25 percent in 1991 to just 1 percent in 2004. Adjusted for inflation, this represents a 56 percent drop. [“Medical Malpractice Payout Trends 1991 – 2004: Evidence Shows Lawsuits Haven’t Caused Doctors’ Insurance Woes,” Public Citizen, May 2005, http://www.citizen.org/documents/Malpracticeanalysis_final.pdf]

A Small Number of Doctors are Responsible for a Large Number of Malpractice Payments

Since the National Practitioner Data Bank (NPDB) began collecting information on malpractice payments in 1990, only 5.9 percent of doctors have been responsible for 57.8 percent of all malpractice payments. An analysis of data from the NPDB by Public Citizen also found that:

- Eighty-two percent of doctors have never had a medical malpractice payment.
- Just 5.9% of doctors have been responsible for 57.8% of all malpractice payments since 1991, according to data from September 1990 through 2005. Each of these doctors made at least two payments.
- Just 2.3 percent of doctors, having three or more malpractice payments, were responsible for 32.8 percent of all payments.
- Only 1.1 percent of doctors, having four or more malpractice payments, were responsible for 20.2 percent of all payments. [“The Great Medical Malpractice Hoax,” Public Citizen, 1/2007, <http://www.citizen.org/publications/release.cfm?ID=7497>]

It is conceivable that Dr. Desai and his half dozen associates have committed more acts of malpractice in the past four years, than all other doctors in Nevada combined!

Caps on Medical Malpractice Don't Work

- **According to Insurance Industry Officials, Medical Malpractice “Reform” Bills Will Not Result in Lower Insurance Rates.** A number of officials from the insurance industry, and their allies, have admitted that medical malpractice “reform” will not lead to lower insurance rates:
 - ✓ **AIA Suggested Prices Will Continue to Rise, Even with Tort “Reform.”** Dennis Kelly of the American Insurance Association has said, “We have not promised price reductions with tort reform.” In addition, an AIA press release stated: “Insurers never promised that tort reform would achieve specific premium savings...” [The Chicago Tribune, 1/3/05; American Insurance Association press release, 3/13/02]
 - ✓ **President of the Physician Insurers Association of America & the General Counsel to the American Tort Reform Association: Premiums Increased, In Part, to Make Up for Lost Investments.** Lawrence Smarr, president of the Physician Insurers Association of America, admitted to the Detroit News that premiums are in part rising to make up for lost investment income. Similarly, Victor Schwartz, general counsel to the American Tort Reform Association, suggested that premiums increased when the insurance companies’ investment income began to decline: “Insurance was cheaper in the 1990s because insurance companies knew that they could take a doctor’s premium and invest it, and \$50,000 would be worth \$200,000 five years later when the claim came in. An insurance company today can’t do that.” [The Detroit News, 7/8/05; The Honolulu Star-Bulletin, 3/20/03]
 - ✓ **President of First Professional Insurance Company: “Responsible” Insurers Can’t Cut Rates After a Medical Malpractice “Reform” Bill Passed.** According to Bob White, President of First Professional Insurance Company, the largest medical malpractice insurer in Florida, “[n]o responsible insurer can cut its rates after a [medical malpractice tort ‘reform’] bill passes.” [Palm Beach Post, 1/29/03]

Instead of Medical Malpractice “Reform,” Insurance Reform is Needed

- **To Actually Reduce Malpractice Premiums, Insurance Reform – Not Tort “Reform” – Is Needed.** Bonnie Bowles, the executive director of the Missouri Association of Osteopathic Physicians and Surgeons has stated that medical malpractice premiums for doctors will not drop significantly without insurance industry reform. “There is not enough accountability, and insurance companies can charge whatever the market can bear,” Bowles said. “Without insurance industry reform, we won't see a significant drop in premiums.” [The Kansas City Star, 7/8/05]
- **Study Shows that Skyrocketing Premiums Are Actually the Result of Medical Malpractice Insurers Price-Gouging Doctors.** A 2005 study conducted by former Missouri Insurance Commissioner Jay Angoff found that insurance companies have been price-gouging doctors by drastically raising their insurance premiums, even though claims payments have been flat, or in some cases decreasing. According to the annual statements of the 15 largest insurance companies, the amount malpractice insurers collected in premiums increased by 120.2 between 2000 and 2004, while their claims payouts rose by only 5.7 percent. Thus, they increased their premiums by 21 times the increase in their claims payments. [“Falling Claims and Rising Premiums in the Medical Malpractice Insurance Industry,” Jay Angoff, 7/05; <http://www.centerjd.org/ANGOFFReport.pdf>]