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WHERE'S THE CRISIS?

HAS AMERICA BEEN DUPED BY THE AMA?

*By Emily Gottlieb and Joanne Doroshow**

SUMMARY

The American Medical Association, a lobby group that is pushing for liability limits for doctors in approximately 18 states as well as Congress, continues to release “surveys” of its members in support of its campaign. The most recent survey was issued on April 3, 2003. According to the AMA, these states are experiencing “liability crises,” necessitating laws that severely limit compensation for the families of those killed or injured by medical malpractice..

What the AMA consistently fails to disclose is that numerous local news outlets have released evidence over the past year that not only fails to support the AMA’s allegations of a lawsuit “crisis” in these states, but actually contradicts it. Moreover, within the last year three of these states – Nevada, Mississippi and Ohio – gave the AMA what is asked for by enacting caps on damage awards; in each case, doctors are still struggling to find affordable insurance.

This is not to deny that some doctors in some states (but not all) are being hit with sudden insurance rate hikes. But as the state Attorneys General put it some 17 years ago in what has sadly become a entirely predictable and recurring insurance phenomenon, “The facts do not bear out the allegations of an ‘explosion’ in litigation or in claim size, nor do they bear out the allegations of a financial disaster suffered by property/casualty insurers today. They finally do not support any correlation between the current crisis in availability and affordability of insurance and such a litigation ‘explosion.’ The available data indicate that the causes of, and therefore solutions to, the current crisis lie with the insurance industry

Center for Justice &
Democracy
80 Broad Street, 17th Floor
New York, NY 10004
Ph: 212.267.2801
Fx: 212.764.4298
centerjd@centerjd.org
web: centerjd.org

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* Deputy Director and Executive
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itself.” *Current Crisis of Unavailability and Unaffordability of Liability Insurance* (Boston, Mass.: Ad Hoc Insurance Committee of the National Association of Attorneys General, May, 1986).

The following states have been identified as “liability crisis” states by the AMA (defined as rising claims, skyrocketing awards and fleeing doctors) in the group’s push for a cap of \$250,000 on non-economic damages. Yet a simple scan of local media stories, which report on what local courtroom and medical data actually show, establishes the following:

- **Arkansas:** No evidence damage awards are rising (because no entity compiles these records)
- **Connecticut:** Little change in number of lawsuit filings for a decade; numbers of neurosurgeons and OB/GYN’s increasing
- **Florida:** Jury awards have dropped as state has grown; number of claims and payouts steadily falling
- **Georgia:** Number of claims paid is down 25 percent; doctors win 85 percent of time
- **Illinois:** Number of claims steady throughout the 1990s; 76 percent dismissed without payment
- **Kentucky:** Doctors per capita increasing faster than the nation
- **Mississippi:** State gaining doctors; only four states grew faster in physician population; cap passed in 2002 but doctors still can’t find affordable insurance
- **Missouri:** Number of claims fell 29 percent since 1987.
- **New Jersey:** Lawsuits down 16 percent since 1997; less than 10 percent of doctors experiencing large rate increase
- **Nevada:** Number of doctors increased 41 percent since 1992; cap passed in 2002 but insurers haven’t reduced premiums
- **New York:** Number one in nation for per capital surgical specialists: number three for OB/GYN’s; largest insurer denied rate hike
- **North Carolina:** Number of doctors up 41 percent since 1992
- **Ohio:** Number of case filings equal to 1995; juries ruled for patients less than half as often as in 1995; cap passed in 2003 but insurers haven’t reduced premiums
- **Oregon:** Cases against doctors decreased from 2000 to 2001
- **Pennsylvania:** Jury awards are dropping; million dollar awards down for second straight year
- **Texas:** Claims falling since 1999
- **Washington:** Little change in lawsuits filed; number of million dollar awards same as in 1999
- **West Virginia:** Claims down since 1993; amount paid to settle claims constants since 1993

State Breakdown

Arkansas

“Have civil damage awards, on average, actually been going up in Arkansas over the years? It’s hard to say, because *no one entity in Arkansas is compiling records* on all of them. The



Arkansas Administrative Office of the Courts collects data on court cases throughout the state, but individual counties' reporting has been sporadic over the years." (emphasis added). Laura Kellams and Michael Rowett, "Tort-reform bills in spotlight State, national lawmakers debate limits on some lawsuits," *Arkansas Democrat-Gazette*, March 2, 2003.

Connecticut

"In 2002, 368 medical malpractice lawsuits were filed in Connecticut, according to the State Superior Court in Hartford. ***That number changed little during the past 10 years***, from a low of 272 in 1991 to 1992 to a high of 389 in 1998 to 1999." In 2001 781 OB-GYNs were licensed to practice in Connecticut. In 2003, *the number had increased* to 819. ***For neurosurgeons, the trend is the same***: 96 neurosurgeons were licensed to practice in 2001, 108 in 2003." (emphasis added) Jane Gordon, "Doctors Upset Over Malpractice. Patients Are, Too," *New York Times*, March 23, 2003.

Florida

"A Gannett News Service analysis of state and federal insurance payment records shows ***little to no increase in the payments insurance companies made to victims of medical malpractice in the past five years***. In fact, Gannett found, ***the amount of medical malpractice awards reported to Florida regulators has dropped as the state has grown***.... Florida's average malpractice award in 2001 was \$219,122 - less than the national average of \$219,461.... For the past five years, national records show, the state's total malpractice awards have increased at a rate of just 1 percent a year. A comparable state database of malpractice payouts shows ***malpractice awards those same years dropping an average of 3 percent a year***.... ***The average jury award*** - which insurance companies say drives them to agree to higher settlement amounts - ***has dropped every year since 1999*** and is now \$326,070, Gannett analysis shows. (emphasis added) Paige St. John, "Malpractice crisis questioned," *News-Press* (Fort Myers, FL), March 26, 2003.

"A Florida Today examination of court records and state and national insurance data found ... ***The number of malpractice claims paid per capita in Florida has decreased steadily since 1995***, state insurance records show. Floridians today get money in malpractice cases at their lowest rate since 1984.... ***Total payouts by malpractice insurers statewide have dropped an average of 2 percent a year every year since 1997***." (emphasis added) John A. Torres, "House passes malpractice cap," *Florida Today*, March 14, 2003.

Georgia

"Last year only five Georgia patients were paid more than \$2 million, according to the National Practitioner Data Bank. The database also says that ***the number of medical malpractice claims paid in Georgia has gone down 25 percent since 1999***." (emphasis added) Barnini Chakraborty, "Doctors, lawyers argue over malpractice caps," *Chattanooga Times Free Press* (Tennessee), March 10, 2003. A study published in 2000 in the *Georgia Law Review* of a half dozen Georgia counties found that tort filings are actually lagging behind Georgia's population growth.... Overall, the plaintiffs prevailed in a little more than half of the jury trials. But in medical malpractice trials by jury, the ***doctors won roughly 85 percent of the time***. (emphasis added). Don Schanche Jr., "Storm brews

in Ga. over malpractice; Sharply rising insurance expenses cause some doctors to drop services,” *Macon Telegraph*, December 30, 2002.

Illinois

In Illinois, *the number of malpractice claims stayed about even over the course of the 1990s*. ... Payouts to people who sued both doctors and hospitals jumped sharply in the early 1990s, but they’ve held relatively even since then. ... **76 percent of malpractice claims were dismissed without payment in 1999.**” (emphasis added). Editorial, “Ups And Downs,” *St. Louis Post-Dispatch*, February 3, 2003, part 1 of a 2 part series entitled, “Malpractice Insurance: Q & A.”

Kentucky

“[T]he number of *doctors per person in Kentucky has increased faster than in the rest of the nation since the early 1980s.*” Gideon Gil, “2003 Kentucky General Assembly; Study: Jury award limits wouldn’t cut doctors’ premiums,” *Courier-Journal* (Louisville, KY), February 25, 2003. “In 2001, 69 malpractice suits went to trial in Kentucky, according to the Kentucky Trial Court Review. Plaintiffs won only 19. And just six plaintiffs won \$1 million or more.” John Cheves and Karla Ward, “Ob/Gyn, Eye Patient Illustrate Problem,” *Lexington Herald-Leader*, February 4, 2003.

Mississippi.

“Medical groups have claimed doctors are fleeing Mississippi, relocating to states with more stable legal climates. So far, the numbers don’t bear that out. In fact, *the state has gained 564 doctors over the past five years.* The state Medical Association has said the growth in doctors lags behind the state’s population growth. But while Mississippi still ranks last in the nation in the number of doctors per capita, it has made dramatic gains since 1995. **Only four states have grown faster in physician population:** Alabama, Alaska, Arkansas and South Dakota. (emphasis added). Joey Bunch, “Crisis or PR campaign?; Pro and con forces seek to win hearts and minds of Mississippians,” *Biloxi Sun-Herald*, August 11, 2002.

In October 2002, lawmakers limited jury awards for non-economic "pain and suffering" damages to \$500,000. Despite enactment of the cap, premiums continued to skyrocket and, for some doctors, coverage is still unavailable at any price. See., e.g., Ben Bryant, “Tort reform has done little to ease malpractice crisis,” *Biloxi Sun-Herald*, February 2, 2003.

Missouri

“[Gov. Bob] Holden’s insurance report, a four-month study of the medical malpractice market, said *that litigation that resulted in a cash payment had dropped 42 percent from 1988 to 2001*, and that *the number of claims overall had fallen from 2,244 to 1,599, or 29 percent, since 1987.* (emphasis added). Deslatte Aaron, “Malpractice rates gain Holden’s attention,” *Springfield News-Leader*, February 7, 2003. “In Missouri, the number of malpractice claims actually dropped over the course of the 1990s. ... In Missouri, average payments to patients who sued doctors rose 23 percent from 1992 to 2001. But that was less than the 26 percent rise in the consumer price

index.” Editorial, “Ups And Downs,” *St. Louis Post-Dispatch*, February 3, 2003, part 1 of a 2 part series entitled, “Malpractice Insurance: Q & A.” In 2001, “fewer malpractice claims were filed against Missouri doctors than in 2000. That was about half as many as the number filed in 1987...[P]ain and suffering awards, which Missouri caps at \$540,000, averaged only about \$84,000.... Yet malpractice insurance premiums are going through the roof here.” Editorial, *St. Louis Post-Dispatch*, October 11, 2002.

New Jersey

“***Patients filed 1,656 lawsuits [in 2001] - a 16 percent decrease from 1997***, when 1,971 were filed, according to figures from the Administrative Office of the Courts.” (emphasis added). Wendy Rudeman, “Untangling the knots of medical malpractice; N.J. legislators must do right by doctors, insurers, lawyers and patients. A bill could come this month,” *Philadelphia Inquirer*, February 19, 2003. The Administrative Office of the Courts “reported that out of 205 medical malpractice cases that went to trial in 2002, plaintiffs prevailed in only 54, or 26 percent. Of those, the average award was \$300,000 for economic and noneconomic damages combined.” Michael Booth, “Medical Malpractice Reform Measure Fails as Neither Side Wants To Bend,” *New Jersey Law Journal*, February 13, 2003. From January through August 2002, ***less than 10 percent of medical malpractice policyholders experienced large rate increases.***” (emphasis added). “N.J. Regulators Say Few Providers Faced Large Med-Mal Premium Hikes,” *BestWire*, January 27, 2003.

North Carolina

Doctors are not fleeing North Carolina. Instead, ***the state has seen a 41 percent increase in the number of physicians since 1992.*** “Doctors' need for bill challenged,” *Raleigh News Observer*, April 8, 2003. “Average malpractice payouts in North Carolina have increased 69 percent over the past 10 years. But spending on national health care services has risen 87 percent over the same period, according to Kaiser Family Foundation.” Sarah Avery, Matthew Eisley and Jean Fisher, “Malpractice fight brews,” *News Observer* (Raleigh, NC), March 30, 2003.

Nevada

“State researchers found ***fewer doctors leaving Nevada due to rising insurance premiums than doctors' advocates reported.*** Thirty-five of the 4,700 medical doctors in Nevada closed their practices, 12 retired and six stopped practicing obstetrics, according to a study by the state legislative research division.... ‘I was shocked to read the statistics,’ Assembly Majority Leader Barbara Buckley, D-Las Vegas, told the *Las Vegas Review-Journal*. ‘Certainly the impression we've been given was inaccurate.’ (emphasis added). “State study says fewer doctors leaving Nevada than reported,” *Associated Press*, February 28, 2003.

In the summer of 2002, Nevada enacted a \$350,000 cap on non-economic compensation in most medical malpractice cases. Within weeks of the law’s enactment, two major insurance companies – American Physicians Assurance and the Medical Liability Association of Nevada – proclaimed that they would not reduce insurance rates. American Physicians Assurance, the primary insurer for Las Vegas obstetricians, said that it had no plans to lower premiums for

several years, if ever. Bob Byrd, chairman of the Medical Liability Association of Nevada, said, “We’re not lowering rates anytime soon.” In January 2003, The Doctors Company filed for a 16.9 percent rate increase, shortly after two other companies filed for 25 percent and 93 percent rate increases, according to the Nevada State Division of Insurance. Joelle Babula, “Medical liability company requests premium increase,” *Las Vegas Review-Journal*, February 11, 2003; Joelle Babula, “Medical Liability Laws: Doctors remain unsatisfied,” *Las Vegas Review-Journal*, January 27, 2003; “Deliveries In Limbo: Women search for care,” *Las Vegas Review-Journal*, January 10, 2003; Lawrence Messina, “Wise mulls trauma care solutions amid Nevada reports,” Associated Press, October 7, 2003; Joelle Babula, “Obstetricians say problems remain,” *Las Vegas Review-Journal*, October 1, 2002; Joelle Babula, “State insurance program holds off on lowering rates,” *Las Vegas Review-Journal*, August 14, 2002; Joelle Babula, “Medical Malpractice: Insurer has no plans to lower costs,” *Las Vegas Review-Journal*, August 10, 2002.

New York

The number of physicians practicing in New York State has skyrocketed and is increasing at a rate faster than the national average. ***New York ranks first in the nation in surgical specialists, which are most likely to be sued, and third in the nation in the number of OB/GYN’s per capita, well ahead of California (ranked 27th).*** When compared to the region, only Connecticut (ranked 2nd) is ahead of New York State in the number of ob gyns per capita. *First Do No Harm; A Consumer Response to the Medical Lobby’s Campaign to Limit The Legal Rights of Injured Patients*, NYPIRG et al., (September 2002) (emphasis added). In July 2002, ***New York’s largest medical malpractice insurer was denied its requested premium increase***, with State Insurance Superintendent Gregory Serio stating, “I don’t think there is any further need for more rates at this point.”

Ohio

A 2002 *Cleveland Plain Dealer* analysis of malpractice suits found that ***“the number of malpractice cases filed in 2001 was almost the same as in 1995. Last year, juries ruled in favor of injured patients less than half as often as they did in 1995, court records show.*** A smaller percentage of their verdicts involved million-dollar awards than in 1995, and the total for all verdicts was 28 percent lower last year.” (emphasis added). Roger Mezger, “Pattern lacking in insurance rate hikes; PD analysis finds no tangible crisis in malpractice suits,” *Plain Dealer*, October 20, 2002. “An exhaustive study of Franklin County cases by Ohio State law professors cast serious doubt on massive jury awards. It showed 114 medical malpractice cases going to trial in 12 years, 30 percent won by the plaintiffs, with a median jury award of \$198,000 – well below the \$300,000 cap on non-economic damages in a pending Ohio Senate bill. Four of the five highest awards were reduced by the trial judge or on appeal.” Leigh Allan, “Cries For Tort Reform All Wet,” *Dayton Daily News*, September 17, 2002.

Legislation capping non-economic damages in medical malpractice cases at \$500,000, with a \$1 million cap for catastrophic injuries, was signed into law in January 2003. After the caps were signed into law, all five major medical malpractice insurance companies in Ohio – American Physicians Assurance, the Doctors Company, GE Medical Protective, Medical Assurance and the Ohio Hospital Insurance Co. – said they had no plans to reduce their rates because of the legislation and that premiums could even rise.” Laura A. Bischoff, “Taft Signs Malpractice Reform Bill; Cap on awards for pain and suffering,” *Dayton Daily News*, January 11, 2003; Andrew Welsh-Huggins, “Doctors

pushing for short-term relief from malpractice rates,” *Associated Press*, January 10, 2003; “Despite new law, insurance companies won't lower rates right away,” *Associated Press*, January 9, 2003; Spencer Hunt, “Docs look for insurance cure,” *Cincinnati Enquirer*, November 26, 2002.

Oregon

“Statistics from the Oregon Board of Medical Examiners show **332 malpractice cases against doctors in 2000, which decreased to 302 cases in 2001.**” (emphasis added). Susan Tom, “Obstetricians play safe, avoid suits,” *Statesman Journal* (Salem, OR), July 9, 2002.

Pennsylvania

“Across Pennsylvania, **the number of medical-malpractice awards for \$1 million or more is down for the second year in a row.... The overall amount of those big jury awards is dropping too.** So far, juries have awarded \$69 million in the first eight months of this year. In 2000, the total was \$415 million. ... In Philadelphia, patients still lose 60 percent of all malpractice trials, but that is much better than suburban counties, where patients lost 80 percent of the time or more.” (emphasis added). Josh Goldstein, “Medical lawsuit payouts still high; Philadelphia awards and settlements made up nearly half of the \$348 million paid out by a state fund,” *Philadelphia Inquirer*, September 22, 2002.

Texas

“The Office of Court Administration has recorded a steady drop in the number of personal injury lawsuits not involving a motor vehicle, the category that would include medical malpractice: from 31,050 suits in 1994-95 to 19,590 in 2000-2001....**[State Board of Medical Examiners] statistics do show a shrinking number of claims since 1999, when the number spiked at 5,715.** Of the 4,445 claims closed that year, 617 resulted in payments, the average being \$208,592. In 2001, 4,083 claims were filed, but only 1,088 were closed. Of the 23 closed with payments, the average amount was \$267,253.... The Texas Department of Insurance showed a 4 percent increase in claims since 1996, according to an Austin America-Statesman report, far short of the surge in insurance rates.” (emphasis added). Editorial, “Premium importance,” *Fort Worth Star-Telegram*, March 24, 2003.

Washington

According to the state's Medical Quality Assurance Commission, in 2002, “there were 11 malpractice payments of \$1 million or more – exactly the same number as in 1999.” Carol M. Ostrom, “Arguments, facts behind malpractice debate Q&A,” *Seattle Times*, February 21, 2003. “The insurance premium rate increases are coming despite **little change in the number of malpractice suits filed each year against doctors in the state.**...According to a report by Physicians Insurance, a self-funded mutual company operated by doctors that provides malpractice insurance for about two-thirds of the state's doctors, the frequency of claims per 100 insured clinics and physicians averaged 6.3 in 1990, then rose to 10.7 in 1995, but has since declined. In 2002, the claim frequency per 100 insured doctors was 6.2.” (emphasis added). Julia Anderson, “Tort & Retort:

Doctors say they're dogged by rising costs of premiums and jury awards, while attorneys say it's not their fault," *The Columbian* (Vancouver, WA.), February 9, 2003.

West Virginia

"The number of claims against the state's doctors since 1993 has decreased and the amount of money spent to settle the claims has not changed, according to board of medicine records."

(emphasis added). Joy Davia, "Doctor dilemma; The Medical Malpractice Debate," *Charleston Gazette*, December 1, 2002. "Board of Medicine records show that the number of malpractice claims filed against doctors licensed in West Virginia dropped between 1992 and 2000." Lawrence Messina, Caution advised amid medical malpractice debate, *Associated Press*, November 18, 2002. ***"The average West Virginia payout from 1999 to 2002 was less than the national average and lower than 27 states and the District of Columbia. ... A Gazette analysis, meanwhile, said the number of claims against the state's doctors since 1993 has decreased and the amount of money spent to settle the claims has not changed."*** Joy Davia, "Putting a price on pain; State struggles to keep doctors, patients happy," *Charleston Gazette*, November 17, 2002. "Reporter Lawrence Messina combed through thousands of records of claims from the Board of Medicine. He found that the number of claims has been decreasing, and that the amount of money paid to settle claims has remained relatively constant since 1993.... He also found that less than one-fifth of the number of doctors licensed in the state had ever been sued for malpractice, and less than 4 percent of the doctors in the state were sued in any given year." Dan Radmacher (editorial), "Malpractice diagnosis incorrect," *Charleston Gazette*, August 23, 2002. "[Lawrence] Messina found that jury awards in West Virginia had fluctuated, but generally held steady between 1993 and 2000. The number of claims filed each year actually decreased. Messina found this out by examining Board of Medicine records that insurance companies are required to file. He looked at nearly 2,300 resolved claims." Dan Radmacher (editorial), "AP article misses malpractice mark," *Charleston Gazette*, July 26, 2002.