

HYPOCRITES OF “TORT REFORM”:
DOCTORS AND ORGANIZED MEDICINE

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INTRODUCTION

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No one likes a hypocrite. Yet one would be hard pressed to find more hypocrites than within organized medicine.

Take a look at the record of a host of state medical societies, often joined by the American Medical Association (AMA), who complain about lawsuits and argue that compensation to injured patients should be severely limited. Yet when an HMO, a health insurer or even an auto insurance company has treated doctors unfairly, these doctors go straight to court. And to top it off, while lobbying to limit patients' ability to sue and collect compensation from doctors who commit malpractice, they say it is unfair to limit *their* right to sue and collect compensation from HMOs and health insurers.

What's more, ask most doctors and they'll tell you they want to limit compensation for injured patients to \$250,000 for non-economic losses like permanent disfigurement, loss of a limb, blindness, or pain and suffering. Yet doctors are among the highest paid professionals in the country. When one looks at publicly available annual salary records for some of the critics of injured patients who sue, one finds that they earn well over \$250,000 *a year* –without any pain or suffering at all.

In this report we take a look at doctors, medical societies and other proponents of compensation caps for patients injured by medical malpractice, and we find that they do not “practice what they preach.” We examine doctors and medical societies who have sued for substantial amounts of money while at the same time championing damage caps and other severe liability restrictions for others. We also look at several physicians who have advocated severe caps for patients, yet are among the highest paid doctors employed by hospitals today.

These examples are by no means exhaustive but merely representative of doctors and medical societies who say one thing but do another when it comes to the civil justice system.

DOCTORS WANT THEIR DAY IN COURT – BUT DO NOT WANT OTHERS TO HAVE THEIRS

The American Medical Association has made its “top legislative priority”¹ limiting the liability of doctors, even those who have committed egregious malpractice resulting in catastrophic injuries or death. In support of its mission, AMA President Dr. Donald Palmisano, never misses the opportunity to condemn medical malpractice lawsuits brought by injured patients against doctors: “It’s like a lottery system. . . . There are a lot of junk lawsuits, as President Bush called them today. And we agree with that.”² Legislation that the AMA supports would severely limit the rights of all injured patients to sue and be compensated.

Yet rarely, if ever, do specific tort restrictions advocated by the AMA or state medical societies limit doctors’ rights to sue managed care companies or health insurers for financial losses. In fact, when doctors believe they have been wronged in some way, they do not hesitate to use the courts to obtain financial compensation, to hold a wrongdoer accountable or to obtain justice. The Litigation Center of the AMA and state medical societies have been involved in 62 cases between 2000 and 2003 as part of their mission is to pursue litigation on behalf of doctors.³ Here are a few examples:

- In May 2003, New Jersey doctors filed a class action lawsuit against Allstate New Jersey, Liberty Mutual Insurance Group, Prudential Property and Casualty Insurance Company of New Jersey, State Farm Indemnity Company and other auto insurers for paying them less than what it costs to treat accident victims.⁴
- Nineteen medical societies and associations – including the California Medical Association, the Florida Medical Association, the Medical Society of the State of New York, the Texas Medical Association and the Washington State Medical Association, representing nearly 700,000 physicians nationwide – filed a number of lawsuits, some dating back to 1999. The suits were brought against Aetna, Cigna, United Health Care, WellPoint Health Networks, Anthem Blue Cross/Blue Shield, Prudential Healthcare, PacifiCare Health Systems, Coventry Health Care, Foundation Health Systems and Humana and were consolidated into a large class action lawsuit currently pending in Florida federal court.⁵

Physicians allege that the insurers improperly denied and delayed payments, used their economic power to force them into unfavorable contracts and used pay schemes to reduce the amount of care as part of a racketeering conspiracy.⁶ “We just want to change the system,” said Tim Norbeck, executive director of the Connecticut State Medical Society.

“It’s an unequal playing field.”⁷ “We tried legislation and negotiation to no avail,” said J. Capers Hiott, president of the South Carolina Medical Association. “It has now become necessary to level the playing field through litigation.”⁸

In May 2003, Aetna settled the claims against it, agreeing to pay the medical societies \$170 million. Commenting on the agreement, Donald J. Palmisano, AMA president and the Association’s chief spokesperson advocating caps on damages for injured patients, said, “The American Medical Association expects this settlement to raise the bar for the entire health insurance industry on fair and open business practices.”⁹

More recently, in September 2003, Cigna agreed to pay \$540 million to settle its portion of the lawsuit.¹⁰ In discussing the settlement, Michael E. Greene, president of the Medical Association of Georgia, said, “Our purpose was not primarily monetary damages. We’ve got to fix the way the system works now and in the future.”¹¹

The remaining defendants – Anthem, Coventry, Foundation, Humana, PacifiCare, Prudential, United and Wellpoint – have challenged the lawsuit’s class-action status in federal appeals court.¹²

- In August 2002, the Hawaii Medical Association (HMA) filed a lawsuit against the state’s largest medical insurer, alleging unfair reimbursements and anti-competitive practices. More specifically, the Association claimed that the Hawaii Medical Service Association (HMSA) used computer profiling programs and other methods to routinely reduce and deny claims in order to meet internal financial goals.¹³ “We have tried everything over the years to get HMSA to deal fairly and reasonably with physicians. Our efforts have been in vain,” said HMA President Gerald J. McKenna, adding, “We were driven to file the lawsuit.”¹⁴ The outcome of the case is unknown.
- In May 2002, the Medical Society of New Jersey filed separate lawsuits against AmeriHealth HMO of New Jersey Inc., HealthNet and Oxford, alleging that they used deceptive and illegal methods to deny or delay payment to physicians. In particular, the Society argued that the insurers used computer software that automatically denied claims regardless of a patient’s condition, failed to explain denial of claims, violated the state’s prompt payment laws and “downcoded” claims (*i.e.*, made it seem that doctors performed simpler procedures so the insurers could pay less).¹⁵ As Robert Rigolosi, president of the Medical Society of New Jersey, put it, “These abuses have been going on for years now.... In our frustration, we felt that we just couldn’t deal with the problem any longer.”¹⁶ The cases are still pending.
- In April 2002, the Tennessee Medical Association (TMA) filed a class action lawsuit in state court against Blue Cross/Blue Shield of Tennessee over its reimbursement practices. More specifically, the TMA claimed that the company penalized doctors who provided

treatment the insurers deemed unnecessary, reimbursed physicians for less expensive procedures than they performed and used a computer program to automatically reduce or reject some claims submitted by doctors. The outcome of the case is unknown.¹⁷

- In August 2001, the Medical Society of the State of New York (MSSNY) filed separate class action lawsuits against Oxford and Excellus Health Plan, claiming that the HMOs had arbitrarily denied medically necessary care, made “capricious” cuts in reimbursement claims and used computer programs that denied claims based on arbitrary guidelines.¹⁸ The Association sought money damages and a court order to halt the companies’ practices. When explaining why such lawsuits were necessary, MSSNY President Robert Bonvino said, “It really is sad that we have to go to the court system to make HMOs live up to their contract. Unfortunately, there’s no other way.”¹⁹ The outcomes of the cases are unknown.
- In March 2000, the American Medical Association, the Medical Society of the State of New York and the Missouri State Medical Association filed a class action lawsuit against United HealthCare and Metropolitan Life Insurance, claiming that the companies used unreliable or insufficient data when paying physicians or reimbursing patients for medical services. The case is still pending.²⁰
- In December 1999, the Medical Association of Georgia sued Georgia Blue Cross/Blue Shield for failing to provide its doctors with fee schedules and the methodology used for determining payments. The Georgia Court of Appeals ordered the HMO to disclose such information, a decision the state Supreme Court declined to review.²¹

DOCTORS WANT THEIR LEGAL RIGHTS PRESERVED – BUT WANT TO TAKE AWAY THE RIGHTS OF OTHERS

Two years ago, the American Medical Association was lobbying hard for patients’ right to sue – HMOs, that is. The AMA was part of a large coalition of groups, including trial lawyers, campaigning for a federal law to allow patients to hold HMOs accountable in court for decisions leading to injury or death. But as the *Washington Post* recently reported, the American Medical Association has stopped lobbying for this bill. It has instead “shift[ed] its top legislative priority to limits on medical malpractice lawsuits -- a goal that Bush shares.”²²

At the federal level, the AMA is now lobbying for H.R. 5/S. 11, legislation that would, among other things, severely cap damage awards and impose shorter statutes of limitation on patients’ rights to sue in many states. At the state level, similar proposals abound.²³ In some states, like California, Utah and Nevada, doctors are starting to compel patients into signing mandatory binding arbitration agreements as a prerequisite for patients to receive medical treatment. These

agreements force patients to sign away their legal rights to hold negligent doctors accountable in court in the event the patient is killed or injured due to malpractice.²⁴

Yet incredibly, when it comes to doctors' dealings with managed care organizations ("MCOs"), the AMA reverses its position altogether, finding such restrictions fundamentally unfair. Let's see what they say in an AMA document called *Model Managed Care Contract*, dated 2002:

- **AMA OPPOSES CAPS ON DAMAGE AWARDS:** Provisions that limit the amount or type of damages that can be recovered through litigation (i.e. caps) "is another tactic designed to effectively strip the physician or physician group/network of real remedies in litigation with the MCO." Given the high cost of litigation, such limitations are "clearly designed to chill the physician from bringing any lawsuit. Also there is no attempt to make the limitations on remedies mutual."²⁵
- **AMA OPPOSES SHORTER STATUTES OF LIMITATIONS:** Efforts to impose shorter statutes of limitations on certain types of claims are inappropriate because "there is no rational reason why MCOs should seek special treatment not available to others in limiting such actions to a [shorter] period."²⁶
- **AMA OPPOSES "LOSER PAYS":** Provisions that entitle a prevailing party in a lawsuit to recover fees and costs from the other party (known as "loser pays"), are "designed to further deter a physician or physician group/network from bringing a legal action to enforce their rights. Physicians are already deterred by the legal war chests MCOs have available to fight lawsuits. This clause ups the ante significantly by requiring the physician or physician group/network to pay attorneys fees and other costs of litigation if the MCO prevails in the lawsuit."²⁷
- **AMA OPPOSES MANDATORY ARBITRATION:** "Arbitration clauses [are] a mechanism to block physician attempts to hold MCOs accountable before courts of law. . . . The primary disadvantage is that arbitration forecloses the option of taking a dispute to court. . . . There may be reasons a physician wishes to bring a lawsuit in court. For example, in a lawsuit, a court has broader authority than an arbitrator to compel the MCO to produce documents and witnesses that may be helpful to the physician's case. Also there can be advantages to having a case heard by a jury."²⁸
- **AMA SUPPORTS CLASS ACTIONS:** "Physicians need to be aware that MCOs are beginning to insert provisions in contracts that prohibit a physician from consolidating his/her arbitration claim with other physicians who may have similar claims. This is another attempt to limit a physician's ability to participate in class action lawsuits."²⁹

By recognizing the power of our civil justice system to protect the rights of those who have been injured or treated unfairly, while fighting to weaken that very system when it comes lawsuits against doctors, the AMA demonstrates remarkable hypocrisy.

DOCTORS WANT TO MAKE A COMFORTABLE LIVING – BUT DO NOT WANT THE SAME FOR THE PEOPLE THEY INJURE

Doctors who want to deprive sick and injured Americans of their right to be fairly compensated for injuries they cause, particularly specialists who are doing most of the complaining, are a handsomely-compensated bunch.

AMA President Dr. Donald Palmisano is a good example. According to a recent release from Public Citizen, “From July 1, 2000 to June 30, 2002, Palmisano collected \$291,747 from the AMA for 294.5 days of work serving as a trustee and secretary-treasurer. That’s more for part-time work over two years than he wants Congress to permit medical malpractice survivors to collect for a lifetime of pain and suffering. Palmisano is also a surgeon in private practice in Louisiana and is president of Intrepid Resources, a medical malpractice risk management firm that he founded.”³⁰

Public Citizen also found that, “Richard F. Corlin, former president of the AMA, earned \$230,000 for working 184 days, or about \$1,250 per day. The AMA president-elect, immediate past president and chair also collected \$230,000 for working between 135 and 160 days, or between \$1,703 and \$1,437 per day.”

The trade association for OB/GYNs, the American College of Obstetricians and Gynecologists (ACOG), has been an outspoken advocate for limiting injured patients’ rights and imposing a nationwide \$250,000 on the amount children who are catastrophically injured at birth can receive for a lifetime of pain, suffering, permanent disfigurement and disability.³¹ In fact, as noted in *OB GYN News*, ACOG has joined with the AMA in claiming that even \$250,000 is “too high.”³²

One of ACOG’s strong advocates for the \$250,000 cap is Dr. Al Strunk, ACOG’s vice-president for fellowship activities. Earlier this year, Dr. Strunk was quoted as saying, “ACOG would like to see federal tort reform legislation passed that would include a cap on noneconomic damages, preferably in the \$250,000 range.”³³ Yet, in 2001, Dr. Strunk collected well over that amount – \$323,000 – just from ACOG and just that year.³⁴ Dr. Strunk was not alone. Other ACOG vice presidents collected between \$311,000 and \$563,000 each that year.³⁵

Not that these salaries are unusual for specialists. The following chart shows median annual compensation amounts for several high-risk medical specialties that are doing most of the complaining about high insurance rates – and are most active in trying to limit patients rights.³⁶

	2001 Compensation	Change from 2000
Cardiologists (invasive)	\$362,209	11.2%
Orthopedic Surgeons	\$354,184	10.5%
Cardiologists (noninvasive)	\$320,111	6.7%
General Surgeons	\$257,509	4.9%
Ob/gyns	\$231,000	3.5%

What's more, malpractice premiums account for a very small percentage of doctors' gross receipts, often less than they pay for rent or even clinical supplies³⁷ Here are some expenses figures for these same specialties:

	Malpractice Insurance	Clinical Supplies	Rent
Cardiologists (invasive)	1.2%	3.7%	2.9%
Orthopedic Surgeons	2.6%	3.3%	4.8%
Cardiologists (noninvasive)	1.2%	1.5%	4.3%
General Surgeons	4.0%	1.4%	4.1%
Ob/Gyns	5.5%	2.6%	4.8%

It seems the movement to limit patients' legal rights is full of hypocritical spokespeople. Center for Justice & Democracy researchers found the names of several doctors who were quoted in news stories discussing doctors' efforts to limit injured patients' rights. Yet we discovered that several were among the highest paid hospital employees listed on publicly-available tax filings. (Tax-filings for tax-exempt, non-profit hospitals are required to list the names and incomes of the five highest-paid employees.)

Here are a few that we found:

Dr. Donald Hofreuter

West Virginia doctor Donald Hofreuter has been an active member of the American College of Physician Executives, as president, vice president, secretary-treasurer and as a member of the Board of Directors. He has been the chief executive officer of Wheeling Hospital in Wheeling, Virginia since 1994. He is also an assistant professor of medicine at West Virginia University School of Medicine.³⁸

In January 2002, Dr. Hofreuter said on national television, “Well, the only [thing] right in this legislation is the noneconomic damage cap, the \$250,000 for pain and suffering....[T]here have to be some economic limits placed on the size of awards.” He said without the cap, there would be “ruination” of the health care system.³⁹

Yet Dr. Hofreuter earns more than \$250,000 a year, more than the cap he supports for an injured patient’s lifetime of suffering due to medical malpractice. In fiscal year 2000-2001, he earned \$314,930 in salary and \$255,957 in contributions to employee benefit plans and deferred compensation from Wheeling Hospital.⁴⁰

It should be noted that Dr. Hofreuter was also the subject of an article in the *Cleveland Plain Dealer* after he claimed that three neurosurgeons left Wheeling Hospital because of liability insurance problems. In fact, the newspaper reported, one of those doctors had been named in nine malpractice suits in seven years, all of which resulted in payments to patients. Another had been named in ten lawsuits in eight years, of which nine led to payments to patients, including a case where the doctor was approached by a medical device salesman on the way to perform spine surgery and was offered a new type of clamp. The doctor used the clamp for the first time right then, without the consent of the patient. The clamp slipped, compressed the spinal cord, and paralyzed the patient from the neck down. The third neurosurgeon, reported the newspaper, lost one malpractice suit, won another, and had recently settled a case in which he had drilled a hole into the wrong side of a patient’s head.⁴¹

Dr. William Wessinger

William Wessinger, M.D. is senior vice president for medical and academic affairs at Memorial Health University Medical Center in Savannah, Georgia. Since July of 2001, Dr. Wessinger has also been a professor of surgery and senior associate dean at Mercer University School of Medicine in Savannah.⁴²

He was recently quoted in a *Savannah Morning News* article supporting doctors’ rallying for caps in Georgia.⁴³ In a telephone interview, Dr. Wessinger, who told CJ&D that he supported the \$250,000 cap, also told CJ&D, “A neighbor, who is now a Congressman asked me if it was my daughter [who was injured by medical malpractice], how would I feel? It made me stop and think. But, it is too expensive and too painful to practice under the current circumstances. We need to buck it up.”⁴⁴

According to tax documents from Memorial Health University Medical Center Dr. Wessinger earned \$301,627 in 2001, more in a year than the cap he endorses for injured patients’ lifetime of suffering.⁴⁵

Dr. Paul Mendelowitz

Paul Mendelowitz, M.D., is currently vice president of medical affairs at Holy Name Hospital in Teaneck, New Jersey.

He advocates a \$250,000 cap on a victim's lifetime non-economic damages award.⁴⁶ When doctors at Holy Name engaged in a work stoppage to press for this cap, Dr. Mendelowitz reportedly said he supported the strike "even though it could bring his hospital to its knees."⁴⁷

That cap is less than the \$282,149 Dr. Mendelowitz made in 2001 from Holy Name Hospital (in addition to \$19,157 in contributions to flexible benefits and deferred compensation).⁴⁸

Dr. Stephen Holbrook

Dr. Stephen Holbrook is Assistant Director of Emergency Medicine at DeKalb Medical Center in Decatur, Georgia.⁴⁹ Dr. Holbrook was quoted in the *Atlanta Business Chronicle*.⁵⁰ He says we need to limit victims' lifetime non-economic damage awards to \$250,000.⁵¹ He also told CJ&D that he wanted to remove all malpractice cases from the court. "I say, blow up the medical malpractice system," he told us.⁵²

In the year July 1, 2000 to June 30, 2001, Dr. Holbrook earned \$253,622 and received \$50,724 in contributions to employee benefit plans and deferred compensation from DeKalb Medical Center.⁵³

CONCLUSION

The movement for medical malpractice "tort reform" is full of hypocrites. Take Senator Rick Santorum (R-Pa.), for example. Senator Santorum has repeatedly supported limits on patients' rights to seek compensation in the courts. But in December 1999, Santorum also supported his wife's medical malpractice lawsuit against her chiropractor. At trial, the Senator testified that his wife should be compensated for the pain and suffering caused by her botched spine adjustment. She asked for \$500,000 and was awarded \$350,000, a verdict the judge set aside deeming it excessive.⁵⁴

The hypocrisy of doctors and medical societies who also support such caps runs deep. While the AMA has written passionately about the need for doctors to resist "tort reform" when it comes to their own lawsuits against managed care companies, it has made "tort reform" for patients suing doctors and hospitals its number one legislative priority. Many doctors who call for caps make far more each year than the amount they deem appropriate to compensate a brain-damaged child for a lifetime of pain and suffering.⁵⁵ These revelations should give pause to any lawmaker who is being pressured to restrict patients' rights and relieve culpable hospitals, HMOs and physicians from accountability in court.

NOTES

¹ See, e.g., “AMA Joins with President Bush in Call for Medical Liability Reform, *PR Newswire*, July 25, 2002.

² *CNN Talkback Live* (Jan. 16, 2003).

³ AMA, *Litigation Center Highlights*, at <http://www.ama-assn.org/ama/pub/category/10631.html> (last updated Sept. 18, 2003).

⁴ Angela Rucker, “N.J. doctors sue car insurers, cite underpayment,” *Courier-Post* (Cherry Hill, NJ), May 27, 2003; “Doctors file class-action suit against auto insurance companies,” *Associated Press*, May 27, 2003.

⁵ Kristen Wyatt, “Health care industry ask judges to dismiss class-action lawsuit on reimbursements,” *Associated Press*, Sept. 12, 2003; “Managed care industry asks for lawsuit dismissal,” *Health & Medicine Week*, Sept. 8, 2003; Craig Crossman, “Aetna Settles Doctors’ Class-Action Suit for \$ 470 Million,” *Connecticut Post*, May 23, 2003; “Aetna: Confirms Settlement With 700,000 Physicians,” *American Health Line*, May 23, 2003; “Aetna, doctors settle dispute,” *Fort Worth Star-Telegram*, May 23, 2003; “Aetna settles doctors’ suit, Insurer to pay \$170 million in complaint about practices,” *The Advocate* (Baton Rouge, LA), May 23, 2003; Aetna press release, “Physicians and Aetna Begin New Era of Cooperation,” May 22, 2003, http://www.aetna.com/news/2003/prtpr_20030522.htm.

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⁸ “Legal Issues: South Carolina physicians sue HMO over reimbursements,” *Managed Healthcare Info*, June 24, 2002. See also, Laura B. Benko, “States of frustration; More medical groups step up battle against insurers,” *Modern Healthcare*, May 20, 2002.

⁹ Joseph Treaster, “Aetna Agreement With Doctors Envisions Altered Managed Care,” *New York Times*, May 23, 2003; “Aetna agrees to pay \$170 million to settle doctors’ payments suit,” *Associated Press*, May 22, 2003; “AMA: Settlement Will Make It Easier for Physicians to Work With Aetna,” *PR Newswire*, May 22, 2003; Kim Dixon and Jed Seltzer, “Aetna Reaches Settlement with Doctors,” *Reuters*, May 22, 2003.

¹⁰ Laura B. Benko, “Pa. insurers head to court,” *Modern Healthcare*, Sept. 8, 2003; Catherine Wilson, “Judge backs \$540 million Cigna settlement with doctors,” *Associated Press*, Sept. 5, 2003; “CIGNA: Settlement Was Logical Next Step,” *BestWire*, Sept. 5, 2003.

¹¹ Tanya Albert, “CIGNA settles class-action suit on pay issues,” *amednews.com*, Sept. 22-29, 2003, http://www.ama-assn.org/sci-pubs/amnews/pick_03/prl20922.htm.

¹² “HMOs: Request Reversal Of Class-Action Status In MD Lawsuit,” *American Health Line*, Sept. 12, 2003; Laura B. Benko, “Pa. insurers head to court,” *Modern Healthcare*, Sept. 8, 2003; “Managed care industry asks for lawsuit dismissal,” *Health & Medicine Week*, Sept. 8, 2003; Andy Miller, “Cigna proposes settlement of doctor-pay lawsuit,” *Atlanta Journal and Constitution*, Sept. 4, 2003; “Cigna Corp. to settle suit with \$540 million,” *The Advocate* (Baton Rouge, LA), Sept. 4, 2003.

¹³ Helen Altonn, “Patients’ group challenges HMSA contract additions,” *Honolulu Star-Bulletin*, December 22, 2002, <http://starbulletin.com/2002/12/22/news/story9.html>; Kristen Sawada, “Lawsuits against HMSA mirror mainland trend in the industry,” *Pacific Business News* (Honolulu), Aug. 19, 2002, <http://pacific.bizjournals.com/pacific/stories/2002/08/19/story3.html>; Andrew Gomez, “Doctor group to sue HMSA,” *Honolulu Advertiser*, August 8, 2002.

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¹⁶ Laura B. Benko, "States of frustration; More medical groups step up battle against insurers," *Modern Healthcare*, May 20, 2002.

¹⁷ Carolyne Park, "Doctors, Aetna settle lawsuit," *Chattanooga Times Free Press*, May 23, 2003; Russ Oates, "Tennessee doctors, insurer settle lawsuit," *Associated Press*, May 22, 2003; Bill Lewis, "Doctors urge colleagues to sue insurers," *The Tennessean*, June 20, 2002; Bill Lewis, "BlueCross BlueShield asks judge to dismiss suits," *The Tennessean*, May 30, 2002; "BCBS Of Tennessee: Seeks Delay Or Dismissal Of TMA Lawsuit," *American Health Line*, May 30, 2002; "Tennessee Blues Asks Judge To Dismiss Physicians' Lawsuits," *BestWire*, May 29, 2002; Carolyne Park, "Doctors group sues state's top health insurers," *Chattanooga Times Free Press*, April 26, 2002.

¹⁸ Jeane MacIntosh, "Lost In Insurance Hell; Late-Paying Firms Suck Up Fines While Penalizing Patients," *New York Post*, March 10, 2003; Tanya Albert, "N.Y. medical society sues six insurers," *amednews.com*, Sept. 3, 2001, http://www.ama-assn.org/sci-pubs/amnews/pick_01/prsb0903.htm; Tamara Loomis, "In Class Actions, Doctors Allege HMOs Deny Care Arbitrarily," *New York Law Journal*, August 16, 2001; Michael Wentzel, "N.Y. doctors sue six HMOs," *Rochester Democrat and Chronicle*, August 16, 2001; "New York Doctors Sue Health Plans Over Business Practices," *BestWire*, August 16, 2001; "New York doctors sue HMOs," *United Press International*, August 16, 2001.

¹⁹ Tanya Albert, "N.Y. medical society sues six insurers," *amednews.com*, Sept. 3, 2001, http://www.ama-assn.org/sci-pubs/amnews/pick_01/prsb0903.htm.

²⁰ American Medical Association, "Physician Payment Issues," updated Sept. 17, 2003, discussing *AMA v. United HealthCare and Metropolitan Life Insurance* (S.D.N.Y.), <http://www.ama-assn.org/ama/pub/category/8100.html>.

²¹ American Medical Association, "Physician Payment Issues," updated March 21, 2003, discussing *Medical Association of Georgia v. Blue Cross & Blue Shield of Georgia, Inc.* (Fulton County, Ga. Super. Ct.), <http://www.ama-assn.org/ama/pub/category/8100.html>.

²² Amy Goldstein, "For Patients' Rights, a Quiet Fadeaway; Hill Partisanship and HMO Changes Cooled a Crusade," *Washington Post*, Sept. 12, 2003.

²³ See, e.g., Fla. S2-D, 2003 Special Session D (Fla. 2003); N.C. S.B. 802, 2003 Gen. Assem. (N.C. 2003); National Conf. of State Legislatures, *Medical Malpractice: Tort Reform*, at <http://www.ncsl.org/programs/health/medicalmalpractice.htm> (Apr. 1, 2003) (Legislatures in 30 states were considering medical malpractice liability in 2003 sessions.)

²⁴ Five years ago, the AMA joined with the American Bar Association and the American Arbitration Association to develop a "Health Care Due Process Protocol," which stated that such pre-incident agreements should not be used: "In disputes involving patients, binding forms of dispute resolution *should be used only where the parties agree to do so after a dispute arises.*" (emphasis added). American Arbitr. Assoc., American Bar Assoc. & American Medical Assoc., Commission on Health Care Dispute Resolution: Final Report, "A Due Process Protocol for Resolution of Health Care Disputes" 2, 15 (July 27, 1998) at <http://www.adr.org/upload%5CLIVESITE%5CfocusArea%5CHealthcare%5CHealthcare.pdf> Now that doctors are using mandatory arbitration agreements in violation of that protocol, the American Arbitration Association has stated that it will not participate in arbitration between a patient and health care provider if the arbitration agreement was created before malpractice occurred. American Arbitr. Assoc., *Health Care Policy Statement*, at <http://www.adr.org/index2.1.jsp?JSPssid=16235&JSPsrc=upload/livesite/focusArea/Healthcare/HEALTH%20CAR E%20POLICY%20STATEMENT.htm> (last visited Sept. 22, 2003).

²⁵ American Medical Association, *Model Managed Care Contract-With annotations and supplemental discussion pieces* 38 (3d ed. 2002), <http://www.ama-assn.org/ama1/pub/upload/mm/368/mmcc-02-public.pdf>.

²⁶ *Ibid.*

²⁷ *Ibid.* at 37.

²⁸ *Ibid.*

²⁹ *Ibid.* at 88.

³⁰ Public Citizen, "AMA's Palmisano Earns 83 Times Per Day What He Wants Medical Malpractice Survivors to Be Compensated," <http://www.citizen.org/congress/civjus/medmal/articles.cfm?ID=9103> (February 26, 2003).

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