

## Fact Sheet: Doctors Come Clean About Lawsuits

Considering the extraordinary number of preventable medical errors committed in the United States and how few doctors are ever sued for this,<sup>1</sup> it may be hard to understand the legislative focus in many states on attacking lawsuits instead of preventing errors in the first place.<sup>2</sup>

“Lawsuits” tend to get blamed for things they don’t do. Insurance groups say that lawsuits are forcing the industry to raise insurance premiums for doctors, making insurance unaffordable for many who, they say, will leave the profession as a result.<sup>3</sup> In fact, medical malpractice lawsuits keep decreasing,<sup>4</sup> and if doctors do leave, the reasons have nothing to do with liability or insurance.<sup>5</sup> At the beginning of the pandemic, lobbyists swarmed public officials with demands for immunity predicting a “wave” of pandemic-related lawsuits that could exacerbate the pandemic crisis – which experts knew would never happen and, in fact, did not happen.<sup>6</sup>

What doctors actually say about lawsuits and insurance premiums is often different from what lobby groups argue. The following are some recent examples.

### Doctors Come Clean About the Impact of Lawsuits

- Of the 47% of internists who report having ever been sued, including situations where claims were quickly dropped (almost none of whom faced an actual trial), “[a]bout two thirds of internists thought the outcome of the lawsuit was fair, similar to the 61% of overall physicians who responded the same.”<sup>7</sup>
- “Similar to physicians in general, most internists in 2021 did not feel that the lawsuit negatively affected their overall medical career.”<sup>8</sup>
- When asked if they’d left the profession, changed or increased insurance, or treated patients differently after the lawsuit, “[h]alf of internists said that nothing occurred as a result of the malpractice suit, slightly less than the 52% of physicians in general who chose this response.”<sup>9</sup>

### Doctors Come Clean About the Impact of COVID Lawsuits

- No doctors surveyed recently by *Medscape* have been sued for a “COVID-related allegation.”<sup>10</sup>
- Surveyed doctors report fewer lawsuits in 2021 compared with 2 years ago (pre-COVID).<sup>11</sup>
- 87% of doctors overall and “80% of internists said they were not concerned about being sued for malpractice over a COVID-related issue that happened during the pandemic.”<sup>12</sup>

## Doctors Come Clean About the Reason Behind Insurance Rate Hikes

The American Medical Association recently examined why insurance rates have gone up for doctors over the last three years. Much of that time was during a pandemic when lawsuits dropped, courts had closed, and trials had stopped. In a news release about the study, AMA President Gerald E. Harmon, MD did not blame lawsuits for rate hikes, but rather admitted for the first time, “The medical liability insurance cycle is in a period of increasing premiums.”<sup>13</sup> This cycle is well known and causes rates to rise and fall irrespective of the number and size of claims or lawsuits.<sup>14</sup> As a result, solutions for doctors facing unfair rate hikes lie with the insurance industry, not with the legal system.

## NOTES

<sup>1</sup> See generally, Center for Justice & Democracy, *Briefing Book: Medical Malpractice: By The Numbers* (January 2022), <https://centerjd.org/content/briefing-book-medical-malpractice-numbers>

<sup>2</sup> See Center for Justice & Democracy and Consumer Federation of America, *How the Cash Rich Insurance Industry Fakes Crises and Invents Social Inflation*, March 9, 2020, <https://centerjd.org/content/study-how-cash-rich-insurance-industry-fakes-crises-and-invents-social-inflation>

<sup>3</sup> Id. See also, e.g., “Social inflation will more than double liability premiums, says Swiss Re,” *Captive International*, August 11, 2021, <https://www.captiveinternational.com/news/social-inflation-will-more-than-double-liability-premiums-says-swiss-re-4553>

<sup>4</sup> See, e.g., Alicia Gallegos, *Medscape Internist Malpractice Report 2021*, March 22, 2022, <https://www.medscape.com/slideshow/2021-malpractice-report-internist-6015038>;

Alicia Gallegos, *Medscape Malpractice Report 2021*, November 19, 2021 <https://www.medscape.com/slideshow/2021-malpractice-report-6014604>; Center for Justice & Democracy, “How Low Can They Go; Civil, Tort, Med Mal, Products Caseloads and Jury Trials,” April 27, 2021, <https://centerjd.org/content/how-low-can-they-go-civil-tort-med-mal-products-caseloads-and-jury-trials>

<sup>5</sup> See, e.g., Avery Hurt, “Docs Are Leaving Practice, but Not Only Because of COVID-19, Says New Survey,” *Medscape*, October 8, 2021, <https://www.medscape.com/viewarticle/960491>, discussing *Non-Clinical Careers Report 2021*, *Medscape*, October 8, 2021, <https://www.medscape.com/slideshow/2021-nonclinical-careers-6014472#1>; Bernard S. Black et al., *Medical Malpractice Litigation: How It Works, Why Tort Reform Hasn't Helped*. Cato Institute: 2021.

<sup>6</sup> While it seemed clear that no one would be bringing malpractice lawsuits in the midst of the pandemic emergency, officials responded in many states by enacting immunity laws for health care professionals. Some of these laws were not limited to COVID-19 patients or even to health care systems experiencing any sort of emergency. Some are still in effect today. But as predicted, the medical malpractice lawsuits never happened. *This was true whether or not a state enacted a liability shield*. See Hunton Andrews Kurth, “COVID-19 Complaint Tracker,” <https://www.huntonak.com/en/covid-19-tracker.html> (viewed March 23, 2022).

<sup>7</sup> Alicia Gallegos, *Medscape Internist Malpractice Report 2021*, March 22, 2022, <https://www.medscape.com/slideshow/2021-malpractice-report-internist-6015038>

<sup>8</sup> Ibid.

<sup>9</sup> Ibid.

<sup>10</sup> See, e.g., Alicia Gallegos, *Medscape Internist Malpractice Report 2021*, March 22, 2022, <https://www.medscape.com/slideshow/2021-malpractice-report-internist-6015038>;

Alicia Gallegos, *Medscape Malpractice Report 2021*, November 19, 2021 <https://www.medscape.com/slideshow/2021-malpractice-report-6014604>

<sup>11</sup> Ibid.

<sup>12</sup> Ibid.

<sup>13</sup> American Medical Association, “AMA analysis shows 3-year surge in medical liability premium increases,” March 10, 2020, <https://www.ama-assn.org/press-center/press-releases/ama-analysis-shows-3-year-surge-medical-liability-premium-increases>

<sup>14</sup> See Center for Justice & Democracy and Consumer Federation of America, *How the Cash Rich Insurance Industry Fakes Crises and Invents Social Inflation*, March 9, 2020, <https://centerjd.org/content/study-how-cash-rich-insurance-industry-fakes-crises-and-invents-social-inflation>