



Buyers Up • Congress Watch • Critical Mass • Global Trade Watch • Health Research Group • Litigation Group
Joan Claybrook, President

NEWS RELEASE

For Immediate Release:
Oct. 6, 2004

Contact: Frank Clemente (202) 441-9818
Jackson Williams (202) 454-5135

Cheney's Claims in V.P. Debate and New Bush-Cheney Medical Malpractice Ad Continue Campaign of Deception and Distortion

Government Data and Studies Show Bush-Cheney Claims About Insurance Rates and Access to Doctors Have No Foundation

WASHINGTON, D.C. – Statements made by Vice President Dick Cheney in his debate with Sen. John Edwards last night as well as the new Bush-Cheney TV ad alleging that there's a "crisis in women's access to healthcare" caused by Democrats blocking "legal reform[s] to stop the frivolous lawsuits" is an exercise in deception and distortion according to a Public Citizen analysis of Cheney's statements and the ad.

"We recognize that some doctors in some states have suffered from large premium increases over the past two years," said Joan Claybrook, president of Public Citizen. "But those rate hikes were caused by a sour economy that resulted in investment losses or lower than expected earnings from stocks and bonds – the principal way insurance companies make money. It had nothing to do with lawsuits and the legal system. Limiting patients' legal rights, as President Bush and Vice President Cheney seek to do, will have no affect on insurance rates and will only harm the most severely injured victims of medical malpractice a second time."

Debate Fact Check

1) Cheney overstates Wyoming doctors' premiums by a factor of six.

Cheney stated: "[In Wyoming] rates for a general practitioner have gone from \$40,000 a year to \$100,000 a year for an insurance policy."

The Facts: In 2004, the insurance rate for the state's leading underwriter (Doctors Company) for family general practice was \$15,322 (no obstetrics, no surgery), according to a non-partisan report from the Wyoming Legislative Service Office.¹

2) Cheney's disappearing doctor figure is contradicted by hard numbers

Cheney stated: "We've lost one out of 11 OB/GYN practitioners in the country."

The Facts: Cheney apparently relied on a survey commissioned by the American College of Obstetricians and Gynecologists (ACOG) in which 9 percent of respondents said they had ceased practice.² But every year thousands of obstetricians stop delivering babies as they get older. The ACOG survey did not attempt to determine whether malpractice rates were a statistically significant factor affecting OB/GYNs' decisions.

In fact, the number of board-certified OB/GYNs in the United States grew by 18.1 percent from 1999 to 2004, according to the American Board of Medical Specialties.³ Meanwhile, the population of women of child-bearing age (15 to 44) increased only 2.9 percent from 1999 to 2003, according to the U.S. Census Bureau.⁴

There are other studies that undercut the validity of Cheney's assertion:

- **A University of California-San Francisco (UCSF) study of New York doctors found that the main reason doctors cease providing obstetrics care is advancing age.** UCSF researchers studied the effect of liability premiums on doctors' behavior, the only such study trying to show such causation that we know of. The study, of New York state physicians during the mid-1980s insurance crisis, found no association between malpractice premiums and doctors' decisions to quit.⁵ The study did find that the decrease in doctors practicing obstetrics was associated with the *length of time* since receiving a medical license in New York. This relationship "very likely represents the phenomenon of physicians retiring from practice or curtailing obstetrics as they age."⁶
- **Obstetricians frequently cut back their practice as they advance in years.** As doctors become more financially secure, and as the child-bearing years of their patient population pass, many obstetricians give up the demands of delivering babies in favor of concentrating on the gynecological needs of their patients. For example, in 2000, 18.7 percent of Georgia's OB/GYNs were between 40 and 44 years old, but only 11.1 percent of OB/GYNs were 50-54 years old – a decrease of about 40 percent.⁷
- **A North Carolina survey found that the main reasons doctors decreased their obstetrics patients were unrelated to fear of lawsuits.** The authors note that while some providers whose obstetrical patient volume had decreased cited fear of lawsuits as a factor, "...[T]his was not the overwhelming reason for stopping or planning to stop deliveries. The strain and inconvenience of the practice and problems with burnout also were issues."⁸

3) Cheney's New Mexico anecdote is revealing: caps on damages don't lower doctors' insurance premiums.

Cheney stated: "I was in New Mexico the other day and met with a group of OB/GYN docs. And they were deeply concerned because they were fearful that there'd be another increase in malpractice insurance rates as a result of what they believe are frivolous lawsuits and that that would put them out of business. And one doctor indicated that her rates have gone up so much that she's now to the point where she is screening patients. She won't take high-risk patients anymore because of the danger that that will generate a lawsuit, and a lawsuit will put her out of business."

The Facts: Cheney is correct that rates have risen in New Mexico, where there already *is* a cap on non-economic damages. But this only proves that his "solution" to a temporary spike in rates – a cap on non-economic damages – does not lower doctors' premiums. According to Medical Liability Monitor, rates for OB/GYNs went up in New Mexico by 52 percent in

2003, but that was *more* than in either of its neighboring states, Arizona and Texas, which did *not* have caps in 2003. In fact, the New Mexico insurance company (Mutual Insurance Company of Arizona), which increased its rates 52 percent in 2003, increased its rates 11 to 14 percent in Arizona that year.⁹

Bush-Cheney '04 Ad Fact Check

1) There is a crisis in health care, especially access to OB/GYNs, caused by frivolous lawsuits:

- There is no factual basis for this assertion. In fact, as the figures above indicate, there has been a dramatic increase in the number of OB/GYNs in the United States since 1999 – prior to Bush administration and AMA claims of a medical malpractice “crisis” – while the number of women of child-bearing age has barely increased.
- This claim has been driven by anecdotes from doctors, especially OB/GYNs, the American Medical Association and its state medical associations. But analysis of their claims has not held up to close scrutiny. In 2003, the U.S. Government Accountability Office (GAO) performed a detailed examination of five of the AMA’s “crisis” states to determine whether evidence supported the claim that rising malpractice premiums affected consumers’ access to health care. The GAO made numerous findings showing the claims lacked a foundation. Two of them relating to OB/GYNs were:
 - **Pennsylvania:** “In Pennsylvania, despite reports of physician departures, the number of physicians per capita in the state has increased slightly during the past six years. The Pennsylvania Medical Society reported that between 2002 and 2003, 24 OB/GYNs left the state due to malpractice concerns; however, the state’s population of women age 18 to 40 fell by 18,000 during the same time period.”¹⁰
 - **Nevada:** “In Nevada, 34 OB/GYNs reported leaving, closing practices, or retiring due to malpractice concerns; however, confirmatory surveys conducted by the Nevada State Board of Medical Examiners found nearly one-third of these reports were inaccurate. ... Random calls [GAO] made to 30 OB/GYN practices in Clark County found that 28 were accepting new patients. ... Similarly, of the 11 surgeons reported to have moved or discontinued practicing, the board found four were still practicing.”¹¹

2) John Kerry and the liberals in Congress blocked medical malpractice reform.

Public Citizen does not take positions on candidates running for election. However, we have fought long and hard in Congress to oppose Bush’s initiatives to limit consumer access to our civil courts and believe his ad mischaracterizes what has happened on medical malpractice legislation in the U.S. Senate this Congress:

- The Senate voted on three malpractice bills. Senator Kerry did not vote to “block” any of these bills. In each case, Majority Leader Frist was required to get 60 votes for the bill to proceed to the floor. And in each case, the Republicans were unable to muster even 50 votes from their 51-seat majority to bring the bill up for debate.

- On the first controversial vote, held July 9, 2003, Frist mustered only 49 votes.¹² Republican Sens. Richard Shelby (Ala.) and Lindsay Graham (S.C.) voted no. On the second vote, February 24, 2004, Frist garnered only 48 votes; Republican Sen. Crapo (Idaho) joined Shelby and Graham in voting no, and Republican Sen. Robert Bennett (R-Utah) failed to vote yes.¹³ On the 3rd vote, April 7, 2004, Frist garnered 49 votes, with Crapo, Shelby and Graham again voting no.¹⁴
- Had Senator Kerry voted “yes” in any of these roll calls, the bill still would have failed to reach the floor. Moreover, had the bill reached the floor, it would not have had sufficient Republican votes to pass. In addition to the three Republican senators who voted no on motions to proceed, other Republican senators, including Orrin Hatch (Utah) and Jeff Sessions (Ala.) have publicly stated reservations about the strict \$250,000 cap contained in all three malpractice bills that were considered,¹⁵ and Sen. Arlen Specter (R-Pa.) is also believed to be opposed to the cap.

¹ Wyoming Legislative Service Office, “Issue Brief: Wyoming Medical Liability Insurance Company Summary,” June 2004.

² ACOG News Release, “Medical Liability Survey Reaffirms More Ob-Gyns Are Quitting Obstetrics,” July 16, 2004. Available at: http://www.acog.org/from_home/publications/press_releases/nr07-16-04.cfm

³ American Board of Medical Specialties, Annual Reports 1999-2004 and Reference Handbook.

⁴ U.S. Census Bureau, Table ST-99-8 Population Estimates for the U.S., Regions, Divisions, and State by 5-year age groups and sex and 2003 update issued Sept. 30, 2004.

⁵ Grumbach, et al, “Charges for Obstetric Liability Insurance and Discontinuation of Obstetric Practice in New York,” *The Journal of Family Practice*, Vol. 44, No. 1 (Jan. 1997) at 61.

⁶ Grumbach, et al, “Charges for Obstetric Liability Insurance and Discontinuation of Obstetric Practice in New York,” *The Journal of Family Practice*, Vol. 44, No. 1, Jan. 1997, at 61.

⁷ Georgia Board for Physician Workforce, “Physician Workforce 2000 Report,” August 2001. Public Citizen was unable to attain similar data for Oregon.

⁸ Fondren and Ricketts at 136.

⁹ Medical Liability Monitor, 2003 rate survey, Vol. 28, No. 10, Oct. 2003

¹⁰ United States General Accounting Office, “Medical Malpractice: Implications of Rising Premiums on Access to Health Care,” GAO-03-836, August 2003. Available at <http://www.gao.gov/new.items/d03836.pdf>

¹¹ GAO Study, p. 18.

¹² http://www.senate.gov/legislative/LIS/roll_call_lists/roll_call_vote_cfm.cfm?congress=108&session=1&vote=00264

¹³ http://www.senate.gov/legislative/LIS/roll_call_lists/roll_call_vote_cfm.cfm?congress=108&session=2&vote=00015

¹⁴ http://www.senate.gov/legislative/LIS/roll_call_lists/roll_call_vote_cfm.cfm?congress=108&session=2&vote=00066

¹⁵ Joint Hearing before the Judiciary Committee and the Committee on Health, Education and Pensions, “On Examining the Status of Patient Access to Quality Health Care, Focusing on the Role of Medical Litigation and Malpractice Reform, Feb. 11, 2003. See Hatch comment on on p. 13 and Session comment on p. 56. Available at: http://frwebgate.access.gpo.gov/cgi-bin/useftp.cgi?IPaddress=162.140.64.21&filename=85062.pdf&directory=/diskb/wais/data/108_senate_hearings