



Victims and Families United
“Our tragedies could be your family story”



Rebuttal to President Bush’s Claims About Medical Malpractice “Judicial Hellholes” in Illinois

President Bush is visiting Madison County, Illinois, which is next to St. Clair County, Illinois, to trumpet his proposal for placing a draconian cap on damages in medical malpractice lawsuits. Bush will label both counties “judicial hellholes.” Public Citizen and Victims and Families United, a Madison County advocacy group, are issuing this analysis of Bush’s frivolous claims.

Lawsuits and Payouts in Madison and St. Clair Counties

President Bush and the medical lobby claim that lawsuits and jury awards are driving doctors out of business – across the country, and especially in Madison and St. Clair counties (commonly referred to as the Metro-East). They also claim that caps on non-economic damages will fix the insurance problem. Or will they?

- Out of 720 medical malpractice and wrongful death cases filed in Madison and St. Clair counties from 1996 to 2003, only 14 cases – or 1.9 percent – resulted in jury verdicts. Six of those verdicts favored plaintiffs. (Source: “Area malpractice crisis eases up,” *Belleville News Democrat*, July 18, 2004)
- There has only been one medical malpractice lawsuit in Madison County that produced a verdict in the last seven years that would have been affected by President Bush’s proposed \$250,000 cap on non-economic damages. That verdict would have yielded \$587,000 in savings from this one case (Source: Madison County Clerk, case 98-L-858). The President’s caps proposal would not have affected the three other medical malpractice jury verdicts in Madison County during the same seven-year period, as non-economic damages did not exceed \$250,000.
- ISMIE Mutual, Illinois’ largest malpractice insurer, paid slightly more than \$11 million in claims and defense litigation costs in Madison and St. Clair counties during 2003. This is about 4 percent of the company’s \$270 million in statewide payouts that year (Source: ISMIE Mutual report to Illinois legislators, February 2004). The two counties population of 500,000 residents accounts for approximately 4 percent of Illinois’ population. Therefore, 4 percent of the state’s population is generating 4 percent of ISMIE’s claims – hardly what one would have expected from “judicial hellholes.”

- Despite claims of an insurance “crisis,” insurance companies’ current and estimated future “payouts” on claims filed against Illinois physicians declined significantly between 2002 and 2003, including in Madison and St. Clair counties. (These “payouts,” called “incurred losses” by insurance companies, include both sums already paid and estimates of those yet to be paid.)

The total dollar value of these “payouts” declined 20.7 percent in Madison County, between 2002 and 2003, dropping from \$9.2 million to \$7.3 million. A 26.4 percent decline occurred in St. Clair County, dropping from \$10.5 million in 2002 to \$7.7 million in 2003. (Source: “Area Malpractice Crisis Eases Up,” *Belleville News Democrat* story citing Illinois insurance division data, July 18, 2004.)

Hospitals Closing or Expanding?

If you believe some claims, Metro-East hospitals are limiting services, closing their doors to patients, and shelving expansion plans. But three major Metro-East hospitals threw a monkey-wrench in this PR message last year:

- St. Anthony’s Hospital in Alton, Ill., announced a \$28 million expansion (Source: “St. Anthony’s plans to build \$28 million addition,” *Alton Telegraph*, June 28, 2004)
- Gateway Medical Center ran numerous ads in local papers announcing the expansion of its emergency room and the addition of new medical equipment and medical staff, including new doctors (Source: Paid ads, *Edwardsville Intelligencer*, June and July 2004)
- Alton Memorial Hospital announced the addition of a \$3.6 million radiation center for cancer patients (Source: *altonmemorialhospital.org*, April 9, 2004)

What Does Blue Cross/Blue Shield Have to Say?

Much has been said in the Southern Illinois media about patients losing access to doctors and health care due to the malpractice crisis. If this is true, someone forgot to share this information with the state’s largest healthcare insurer, Blue Cross/Blue Shield:

“In terms of doctors, Illinois Blue Cross spokesman Tony Rau said its network executives are ‘not aware of any great flight of physicians because of the malpractice issues. We are basically about where we have been. Even anecdotally, [we are] not hearing any evidence of that.’” (Source: “Physician count clouds malpractice argument; State data show increase in doctors,” *Chicago Tribune*, July 16, 2004)

Anecdotal claims about a doctor exodus in Metro-East are similar to those made in the American Medical Association-designated “crisis” states around the country. But here’s what the non-partisan U.S. Government Accountability Office has said about these claims: “In the five [“crisis”] states with reported problems ... *we determined that many of the reported provider actions taken in response to malpractice pressures were not substantiated or did not widely affect access to health care.* For example, some reports of physicians relocating to other states, retiring, or closing practices were not accurate or involved relatively few physicians.” (Source:

United States General Accounting Office, “Medical Malpractice: Implications of Rising Premiums on Access to Health Care,” GAO-03-836, August 2003.)

The Need to Hold Businesses Accountable

Some of America’s largest companies want to take away the legal rights of consumers and patients to hold them accountable for wrongdoing. But they want to use the courts to resolve their own disputes. This is hypocritical and unjust.

- U.S. businesses file four times as many lawsuits as private citizens. A survey of case filings in Cook County, Ill. and Philadelphia, Pa. and in two states—Arkansas and Mississippi—in 2001 found that businesses were 3.3 to 5.8 times more likely to file lawsuits than were individuals. These locations appear to be the only jurisdictions that require attorneys to provide sufficient detail to distinguish business-initiated suits from trial attorney-initiated suits. (Source: *Frequent Filers: Corporate Hypocrisy in Accessing the Courts*, Public Citizen’s Congress Watch, October 2004; <http://www.citizen.org/congress/civjus/tort/myths/articles.cfm?ID=12369>)

The Need for Insurance Reform

Insurance companies across the country fighting for caps on damages typically refuse to commit to reducing insurance rates. “We have not promised price reductions with tort reform,” said Dennis Kelly, an American Insurance Association spokesman in the Chicago Tribune. (Source: “Bush’s tort reform efforts to start in Madison County, Ill.,” *Chicago Tribune*, Jan. 3, 2005.)

Not only are insurance company claims “shaky,” so are some of their business practices.

Dr. Harold Jensen, Chairman of ISMIE Mutual, claims that 93 percent of his company’s investments are in bonds. “We’re chicken, we’re afraid to get adventuresome,” said Jensen (Source: “Lax insurance regulation is core of malpractice crisis,” *St. Louis Post Dispatch*, January 1, 2005).

Yet, ISMIE’s own 2002 annual report to the Illinois Department of Insurance contradicts Dr. Jensen. It stated: “ISMIE realized significant losses from the sale of WorldCom, Tyco, and Qwest securities.”

ISMIE furthered its 2002 losses by giving a \$4.9 million severance package to former CFO Donald Udstuen after he pled guilty to felony bribe charges in the George Ryan scandal. ISMIE’s CEO Al Lerner admitted that he shared in Udstuen’s bribe money, although he insisted he did not know the source of the money (Source: “Witness in probe of Ryan era got \$4.9 mil. goodbye,” *Chicago Sun Times*, May 27, 2003.) Lerner remains in his post to date.

While hiking premiums on their physician policy holders by 35 percent in 2003, ISMIE turned a \$19 million profit and gave pay raises to seven senior executives, including a \$50,000 bonus to their new CFO, Eugene Gross (Source: ISMIE Mutual 2003 Annual Report to the Illinois Department of Insurance). Better yet, ISMIE’s Vice President of State Legislative Affairs, James

Tierney, deceived Illinois legislators by claiming in a letter to them that “we cannot provide specific information with respect to salaries...” (Source: Letter to six Illinois state legislators from James E. Tierney, Vice President, ISMIE, February 5, 2004). However, a month after this claim was made, the information was found in ISMIE’s 2003 annual report on file with the Illinois Department of Insurance.

Clearly, there is a need for insurance reform in Illinois. Even the Chairman of ISMIE Mutual, Dr. Harold Jensen, virtually admitted the need for insurance reform when he said, “state regulators don’t have the power to regulate...” (Source: “Lax insurance regulation is core of malpractice crisis,” *St. Louis Post Dispatch*, January 1, 2005) Legislation needs to be passed, similar to California’s Proposition 103, which requires insurance companies to open their books and justify rate increases to doctors and consumers. Furthermore, better regulation of insurance company business practices is required.

Sorry Works! – a New Middle Ground Solution to the Medical Liability Impasse

Public Citizen and Victims and Families United is advocating a new approach to the medical malpractice impasse between patients and doctors, hospitals and insurance companies. It’s called “Sorry Works!” This program encourages doctors to apologize quickly for medical negligence and errors, and it offers fair compensation to families and their attorneys. Sorry Works! is proven to reduce anger, lawsuits, and medical liability costs, but more victims receive swift justice, constitutional rights are not limited, and repeat medical errors are reduced.

Sorry Works! is a true middle ground solution that has worked in several hospitals, including the Lexington, Kentucky Veterans Administration hospital (Source: Risk Management: Extreme Honesty May Be the Best Policy, *Annals of Internal Medicine*, December 21, 1999) and the University of Michigan Hospital System (Source: “U-M docs say sorry, avert suits,” *Detroit News*, May 2004). Many doctors, hospitals, and insurers are beginning to learn that authentic apologies soothe patient anger and reduce liability costs (Sources: “Doctors Eye Apologies for Medical Mistakes,” *Associated Press*, November 8, 2004; “Medical Contrition,” *Wall Street Journal*, May 18, 2004).

Two years of experience at the University of Michigan have resulted (according to Rick Boothman who initiated the program) in lower defense attorney fees, down from \$3 million to \$1 million per year, and fewer claims filed against the University, down from 262 in 2001 to about 130 per year currently. (Source: *Detroit News*)

Victims and Families United has proposed pilot program legislation in the Illinois legislature that would provide hospitals, doctors, and insurers a risk-free try at Sorry Works! To learn more, visit the Victims and Families website at <http://www.victimsandfamilies.com/Sorry.phtml>.

For more information about the false claims about lawsuits and the legal system made by President Bush go to: <http://www.citizen.org/documents/BushDistortionFactSheet12-15-04.pdf>.

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