

# A Symposium on Medical Malpractice Issues in Maryland

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Public Citizen's Congress Watch

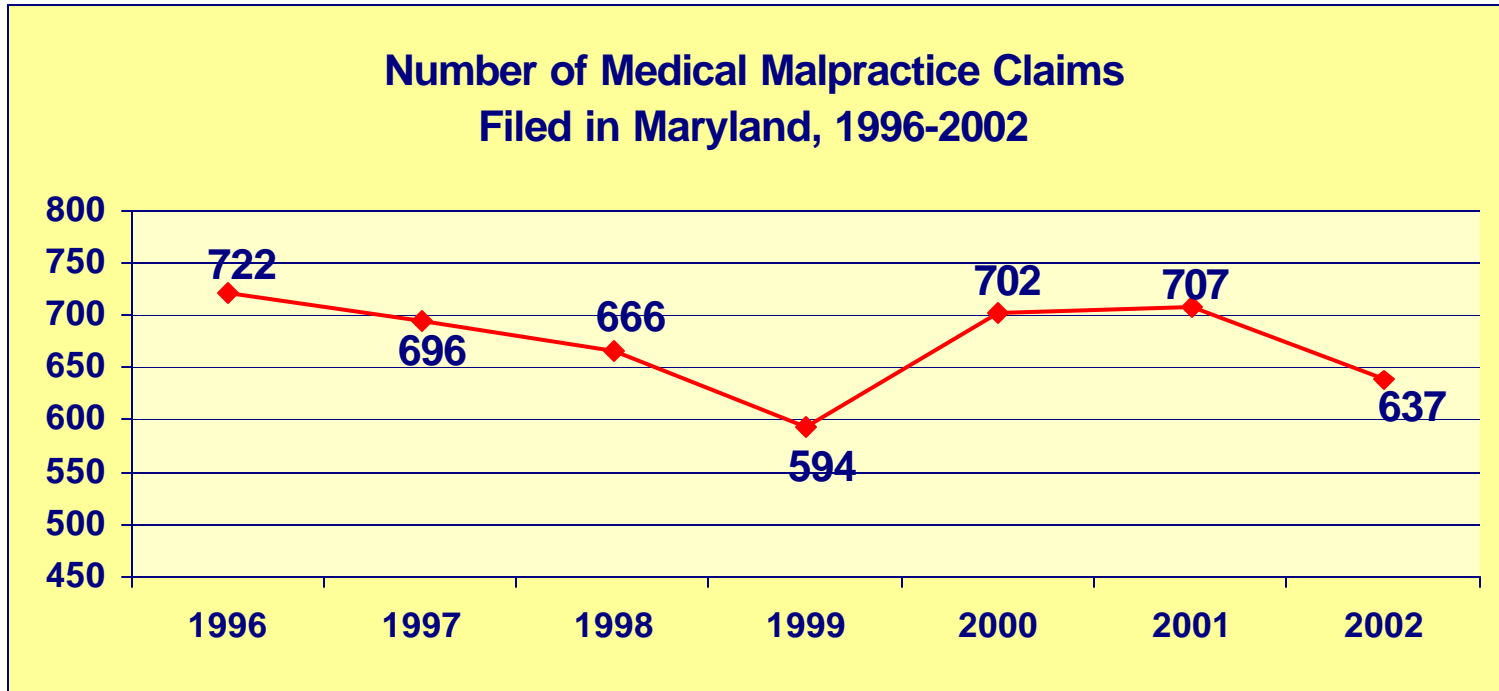


February 3, 2004

## **Section I**

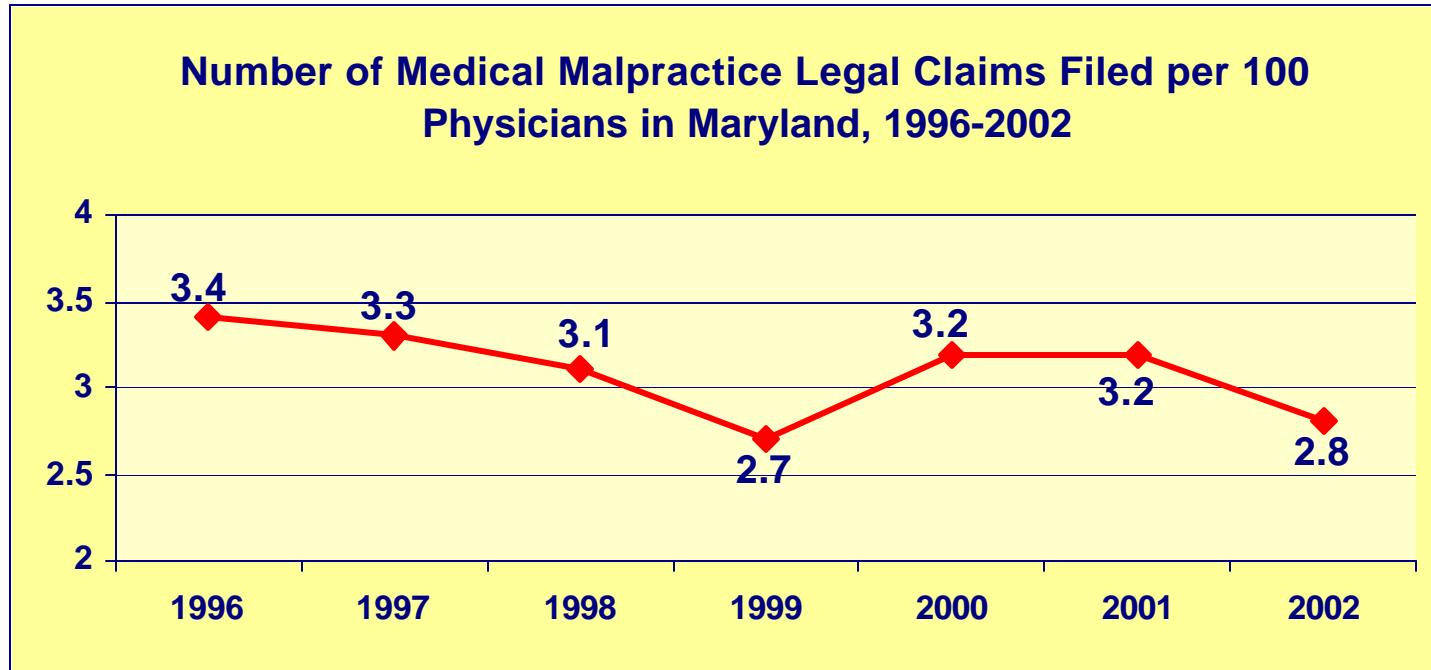
# **Lawsuits Are Not Responsible for Rising Medical Malpractice Insurance Premiums in Maryland**

**Figure 1**



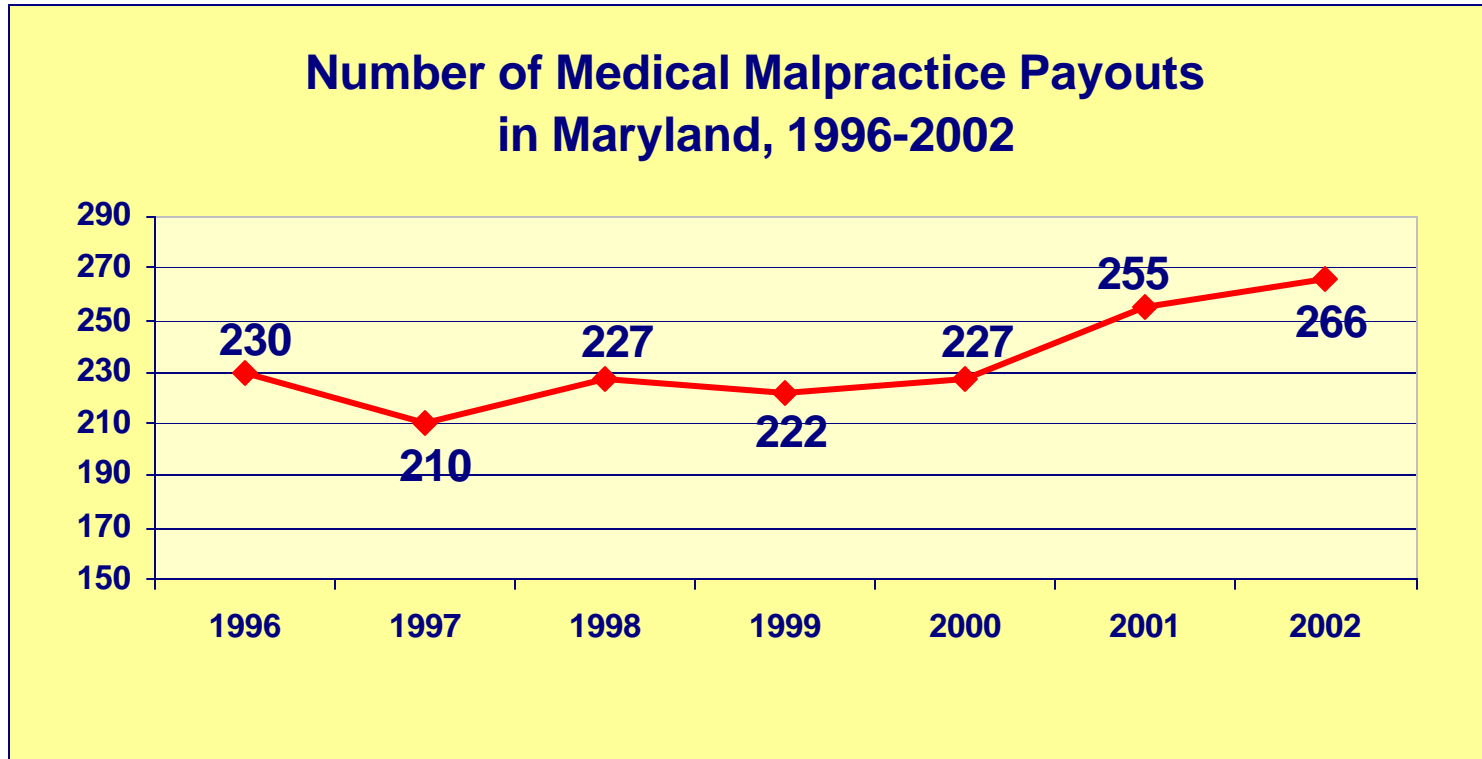
*Source:* Office of Health Claims Arbitration, State of Maryland, 2003.

**Figure 2**



*Sources:* National Practitioner Data Bank, Jan. 1, 1996 – Dec. 31, 2002.  
Calculations based on Maryland Board of Physicians report as submitted to Federation of State Medical Boards Physician Population Survey, 1996-2002.

**Figure 3**



*Source:* National Practitioner Data Bank, Jan. 1, 1996 – Dec. 31, 2002.

**Figure 4**

**Number of Medical Malpractice Payouts per 100 Physicians  
in Maryland, 1996-2002**

	1996	1997	1998	1999	2000	2001	2002
<b>Total Payouts</b>	<b>230</b>	<b>210</b>	<b>227</b>	<b>222</b>	<b>227</b>	<b>255</b>	<b>266</b>
<b>Payouts per 100 Physicians</b>	<b>1.1</b>	<b>1.0</b>	<b>1.0</b>	<b>1.0</b>	<b>1.0</b>	<b>1.1</b>	<b>1.2</b>

*Sources:* National Practitioner Data Bank, Jan. 1, 1996 – Dec. 31, 2002. Calculations based on Maryland Board of Physicians report as submitted to Federation of State Medical Boards Physician Population Survey, 1996-2002.

**Figure 5**

**Total Medical Malpractice Payouts in Maryland vs. Payouts Adjusted for Medical Services Inflation, 1996-2002**

<b>Year</b>	<b>Total Amount of Payouts</b>	<b>Total Payouts in 1996 Dollars</b> (Adjusted for Medical Services Inflation Rate)
<b>1996</b>	\$71.3 million	\$71.3 million
<b>2002</b>	\$73.6 million	\$58.5 million
<b>\$ Change (1996-2002)</b>	<b>\$2.3 million</b>	<b>-\$12.8 million</b>
<b>% Change (1996-2002)</b>	<b>3.2%</b>	<b>-(17.9)%</b>

Sources: National Practitioner Data Bank, Jan. 1, 1996 – Dec. 31, 2002.  
Bureau of Labor Statistics – Medical Services CPI.

**Figure 6**

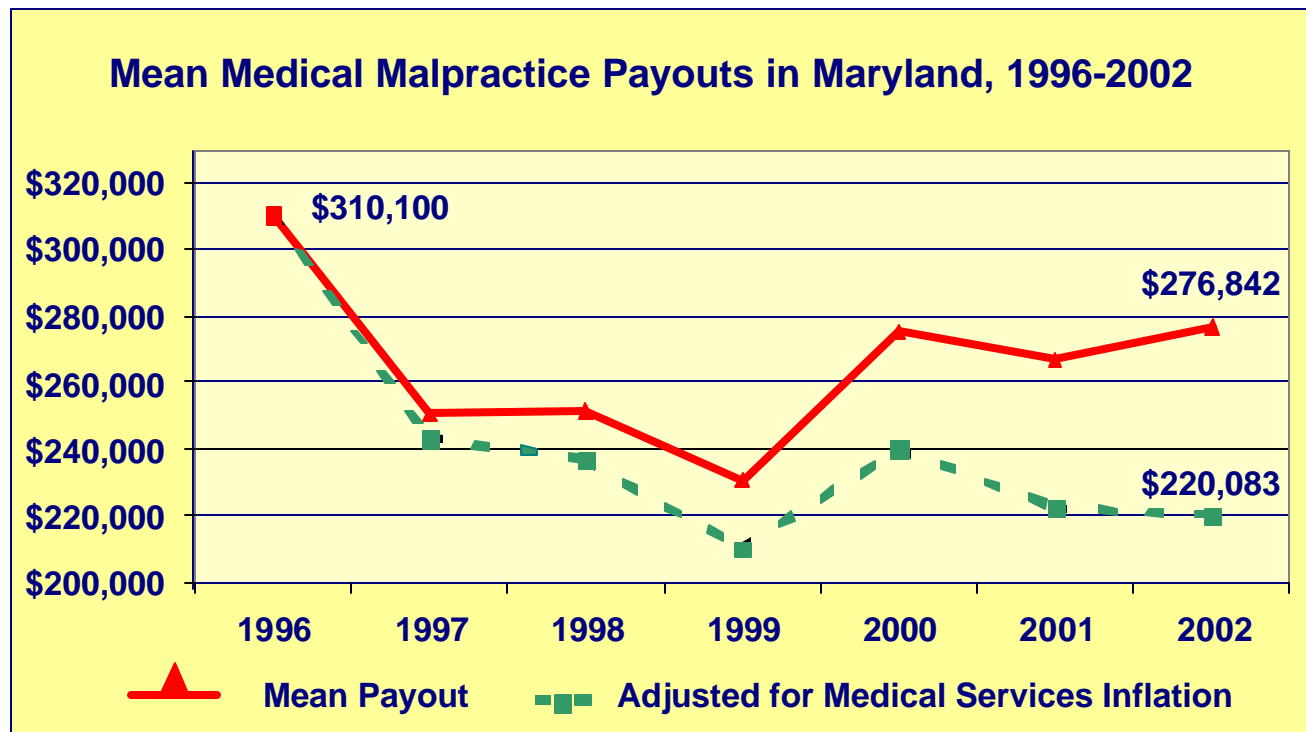
**Total Medical Mutual Malpractice Claims Payouts,  
1994-2002 (Including Legal Expense)**

<b>Year</b>	<b>Total Amount of Payouts</b>	<b>Total Payouts in 1994 Dollars (Adjusted for Medical Services Inflation Rate)</b>
<b>1994</b>	\$49.0 million	\$49.0 million
<b>2002</b>	\$55.0 million	\$40.1 million
<b>\$ Change (1994-2002)</b>	<b>\$6.0 million</b>	<b>-( \$8.9 million)</b>
<b>% Change (1994-2002)</b>	<b>12.2%</b>	<b>-(18.2%)</b>

Source: Tillinghast-Towers Perrin, Medical Mutual Liability Insurance Society of Maryland, Review of "The Facts about Medical Malpractice in Maryland" by Public Citizen, Figure 9, p. 25; dollar figures are approximate.

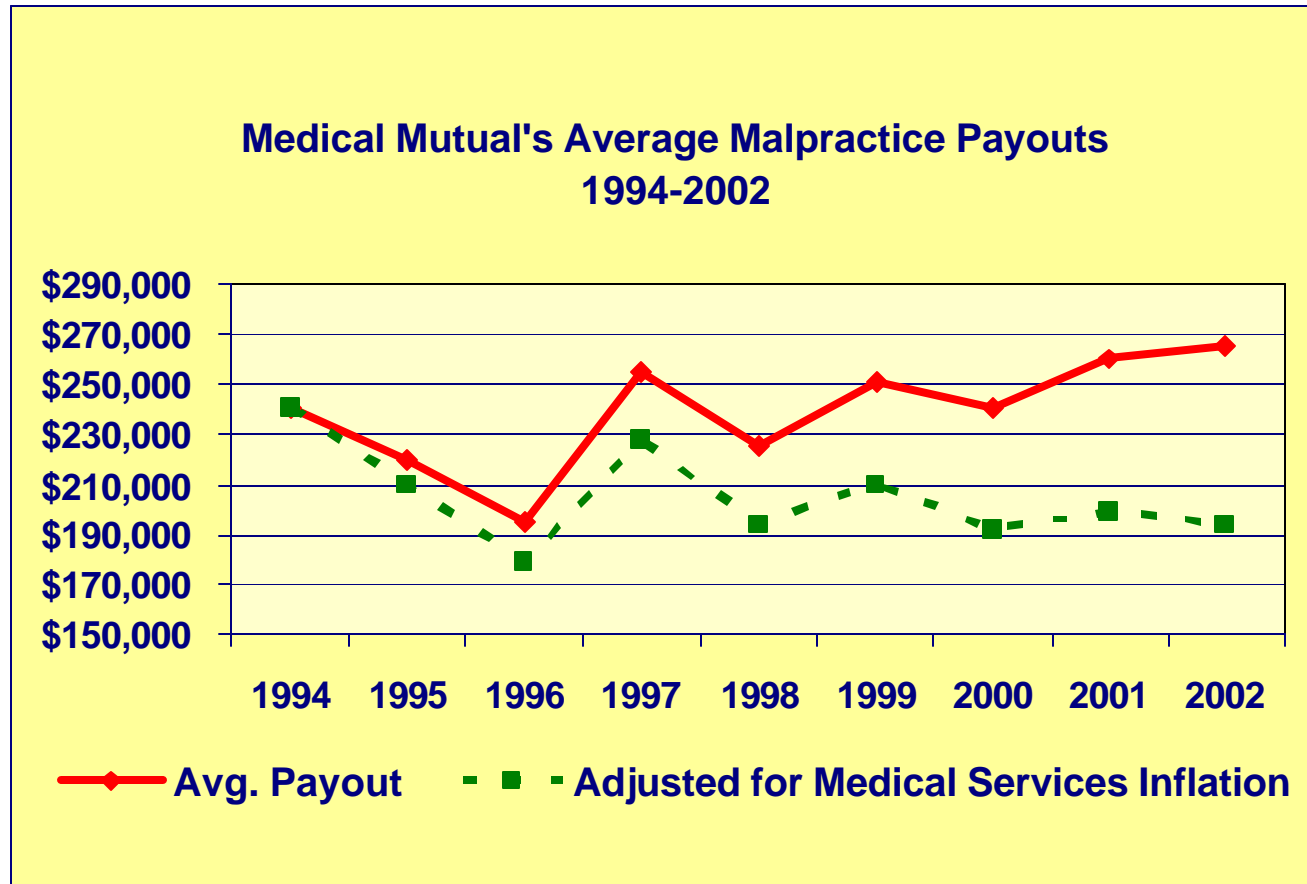


**Figure 7**



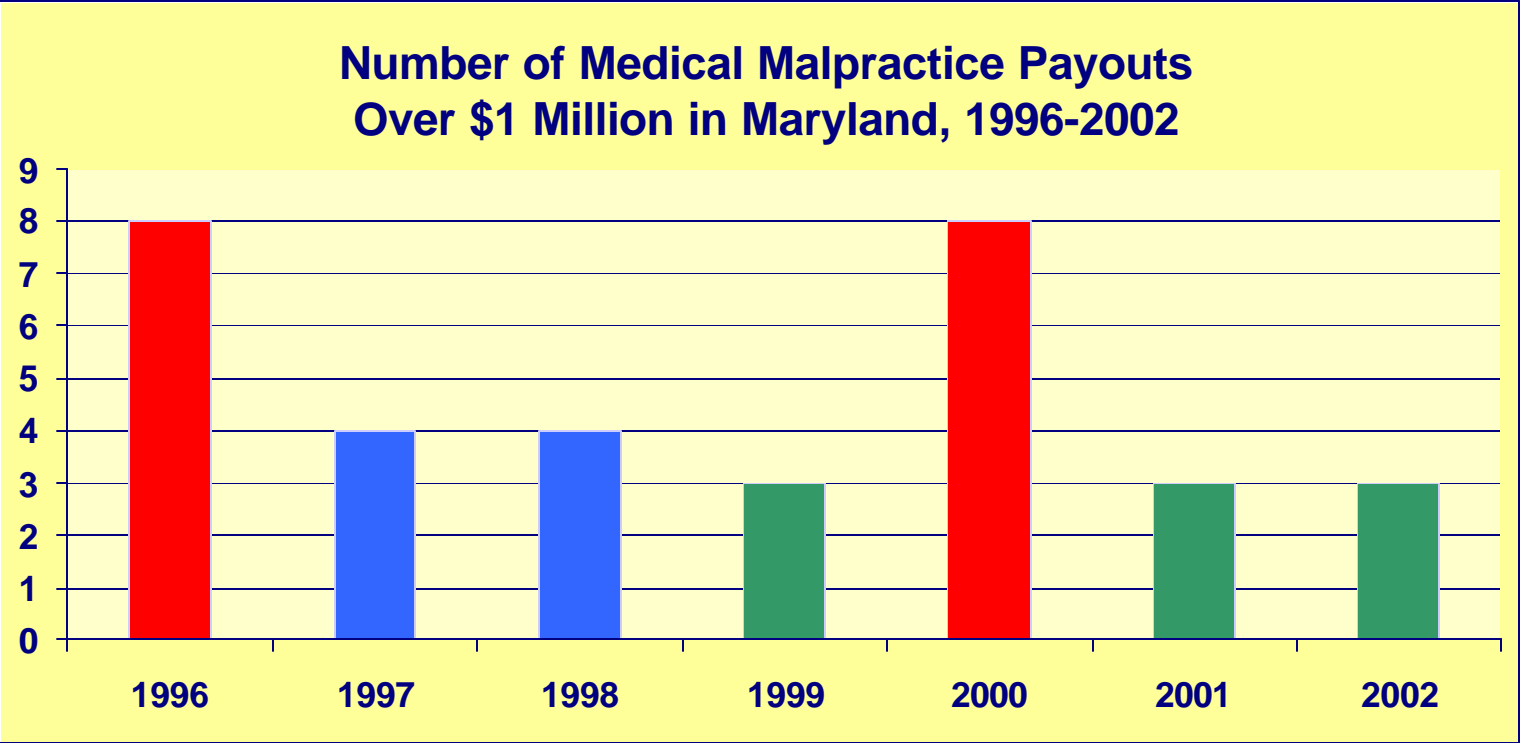
Sources: National Practitioner Data Bank, Jan. 1, 1996 – Dec. 31, 2002.  
Bureau of Labor Statistics – Medical Services CPI.

Figure 8



Source: Tillinghast-Towers Perrin, Medical Mutual Liability Insurance Society of Maryland, *Review of "The Facts about Medical Malpractice in Maryland"* by Public Citizen, Figure 10, p. 26; dollar figures are approximate.

**Figure 9**



*Source:* National Practitioner Data Bank, Jan. 1, 1996 – Dec. 31, 2002.

**Figure 10**

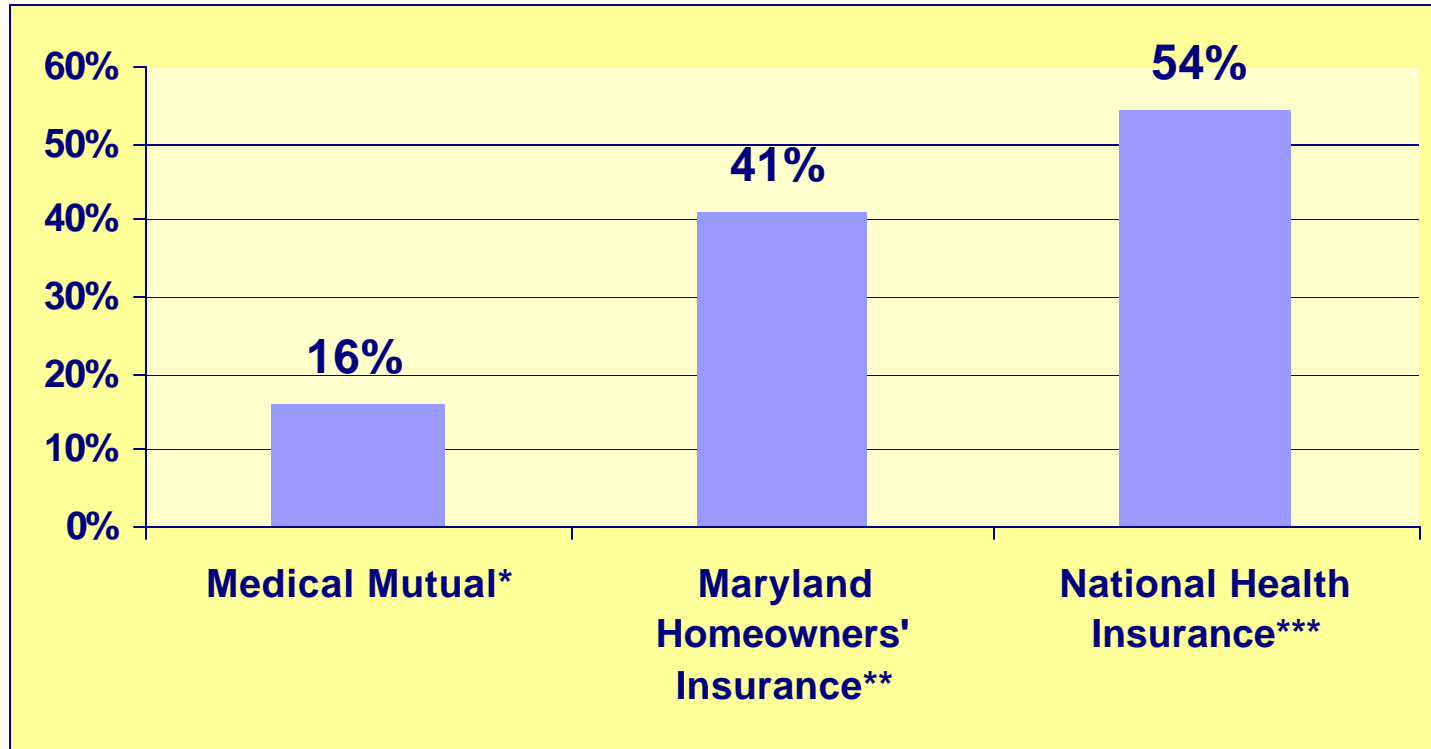
**Licensed Physicians and Osteopaths In Maryland – 1996-2002**

<b>Year</b>	<b>Maryland Physicians</b>
<b>1996</b>	<b>20,994</b>
<b>2002</b>	<b>22,559</b>
<b>Increase</b>	<b>1,565 + 7.4%</b>

*Source:* Maryland Board of Physicians, report submitted to Federation of State Medical Boards Physician Population Survey, 1996-2002.

Figure 11

**Cumulative Change in the Cost of Premiums for Medical Mutual, Maryland Homeowners' Insurance & National Health Insurance, 1997-2002**



Sources: \*Medical Mutual premium amount from Medical Liability Monitor, "Trends in Rates for Physicians' Medical Professional Liability Insurance," 1996-2002 editions. This premium is the midpoint rate charged for general surgery in Montgomery, Prince George's, Howard and Anne Arundel counties. \*\*"Homeowners Insurance Summary of Rate Changes, Weighted Average Change," Maryland Insurance Administration. \*\*\*Kaiser Family Foundation and Health Research and Educational Trust, "Employer Health Benefits, Annual Surveys, 1998-2003."

## **Section II**

**The Real Medical Malpractice Crisis Is Patient Safety  
and Damage Caps Offer No Solution**

Figure 12

**Number of Medical Malpractice Payouts to Patients and Amounts Paid by Maryland Doctors, 1990-2002**

Number of Payout Reports	Number of Doctors That Made Payouts	Percent/ Total Doctors (19,215)*	Percent of Total Number of Payouts
All	2,037	10.6%	100.0%
1	1,461	7.6%	49.2%
<b>2 or More</b>	<b>576</b>	<b>3.0%</b>	<b>50.8%</b>
<b>3 or More</b>	<b>180</b>	<b>0.9%</b>	<b>24.1%</b>
<b>4 or More</b>	<b>67</b>	<b>0.3%</b>	<b>12.6%</b>
<b>5 or More</b>	<b>33</b>	<b>0.2%</b>	<b>8.1%</b>

Source: National Practitioner Data Bank, Sept. 1, 1990 – Dec. 31, 2002.

\* Note: Based on Maryland's population of doctors as calculated by the American Medical Association for 1995, the closest year for which such data is available to the mid-point of the period studied.

**Figure 13**

**Maryland Doctors with Two or More Malpractice Payouts  
Who Have Been Disciplined (Reportable Licensure Actions)  
1990-2002**

<b>Number of Payout Reports</b>	<b>Number of Doctors Who Made Payouts</b>	<b>Number of Doctors with One or More Licensure Actions</b>	<b>Percentage of Doctors with One or More Licensure Actions</b>
<b>2 or More</b>	<b>576</b>	<b>81</b>	<b>14.1%</b>
<b>3 or More</b>	<b>180</b>	<b>37</b>	<b>20.6%</b>
<b>4 or More</b>	<b>67</b>	<b>23</b>	<b>34.3%</b>
<b>5 or More</b>	<b>33</b>	<b>14</b>	<b>42.4%</b>
<b>10 or More</b>	<b>6</b>	<b>3</b>	<b>50.0%</b>

*Source:* National Practitioner Data Bank, Sept. 1, 1990 – Dec. 31, 2002.



Figure 14

**The Real Cost of Medical Malpractice to Maryland's  
Patients and Consumers v. Maryland's Health Care Providers**

**836 – 1,862**

**Preventable Maryland Deaths Due to Medical Errors Each Year**

**\$323 million – \$551 million**

**Maryland Costs Resulting from Preventable Medical Errors Each Year**

**\$155.1 million**

**Cost of Maryland Health Care Providers' Annual Medical Malpractice Premiums**

*Sources:* Preventable deaths and costs are prorated based on population and based on estimates in *To Err Is Human*, Institute of Medicine, November 2000. Malpractice premiums are based on "Medical Malpractice Net Premium and Incurred Loss Summary," National Association of Insurance Commissioners, July 18, 2001.

## Figure 15

### Dangerous Maryland Doctors

#### Doctor X

- An obstetrician/gynecologist who has made payments to at least seven patients since 1981.
- In one case Doctor X punctured a patient's colon during surgery. A jury awarded the patient \$1.5 million, but this was reduced due to the non-economic damages cap.
- Has never been disciplined by the state of Maryland.

#### Doctor Y

- Is an orthopedic surgeon who has made payments to at least five patients since 1980.
- Ordered by an arbitrator to pay \$1.4 million to a patient.
- Has never been disciplined by the state of Maryland.

#### Doctor Z

- Is an orthopedic surgeon who has made payments to at least six patients since 1989.
- Was put on probation within the past ten years. The probation was terminated two years later.
- Practices with no restrictions on license and has been sued multiple times since probation terminated.

*Source:* Public Citizen's Congress Watch, "Dangerous Maryland Doctors," January 2004.

## Figure 16

### Maryland's New "Physician Profile" Law Isn't Working

- Under the 2003 law, only 5 of 180 repeat offender doctors (3 or more payments) are eligible to have their names made public.
- Reason: only doctors who have had three or more malpractice settlements of at least \$150,000 within the past five years are covered by the law.
- None have been posted on the state web site.

*Source:* Public Citizen's Congress Watch, "Dangerous Maryland Doctors," January 2004.

**Figure 17**

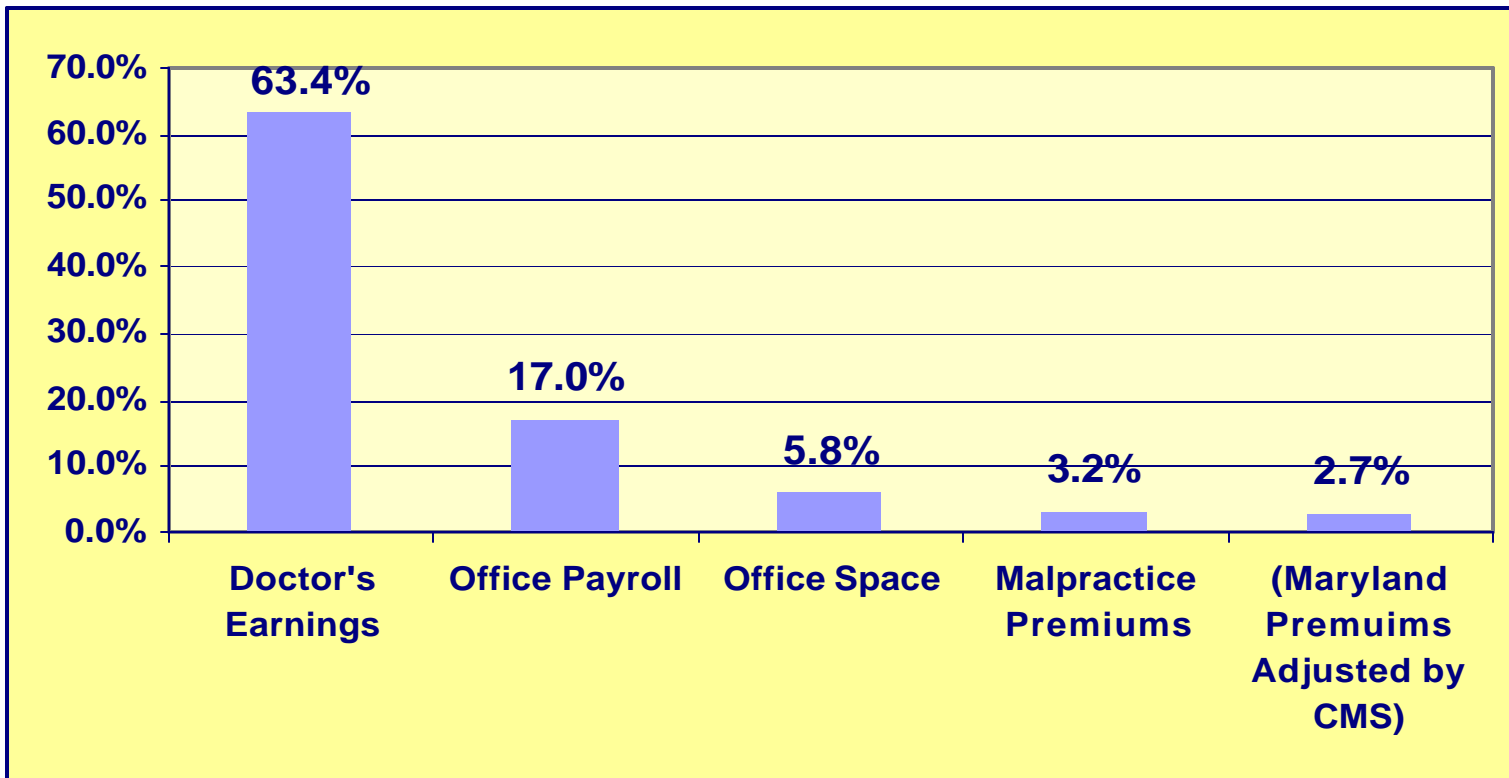
**Number of Medical Malpractice Payouts Affected by a  
\$350,000 and \$500,000 Non-economic Damages Cap in 2002**

<b>Payouts Over \$700,000 (\$350,000 Cap)</b>	<b>Payouts Over \$1 Million (\$500,000 Cap)</b>
<b>29</b>	<b>3</b>

*Source:* National Practitioner Data Bank, Dec. 31, 2002.

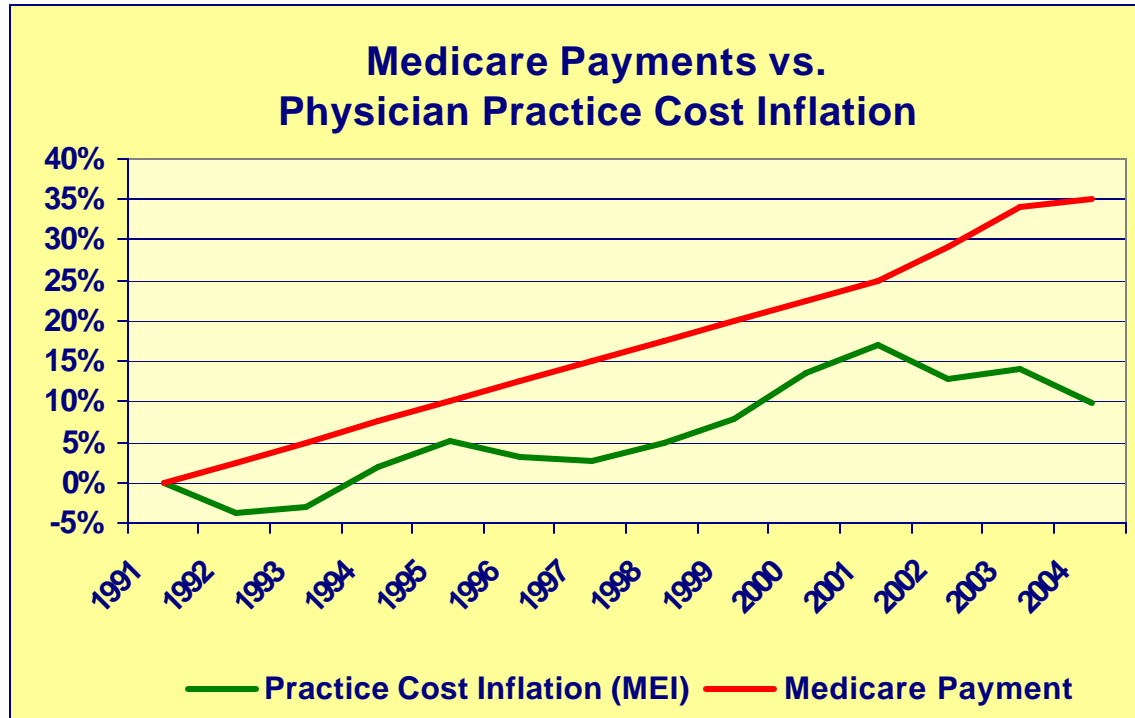
**Figure 18**

**Where Doctor's Practice Income Goes**



Sources: *Medical Economics Magazine*; Office of the Actuary, Centers for Medicare and Medicaid Services (CMS)

**Figure 19**



Sources: American Medical Association Web site, based on physician practice cost inflation (Medicare Economic Index – MEI) all years, Centers for Medicare and Medicaid Services (CMS); 1992-97 payments, Physician Payment Review Commission; 1998-2003 payments, American Medical Association; 2004 projections, CMS.

## **Case Study**

# **Anesthesiology: How Patient Safety Efforts Eliminated a Malpractice Crisis**

## Figure 20

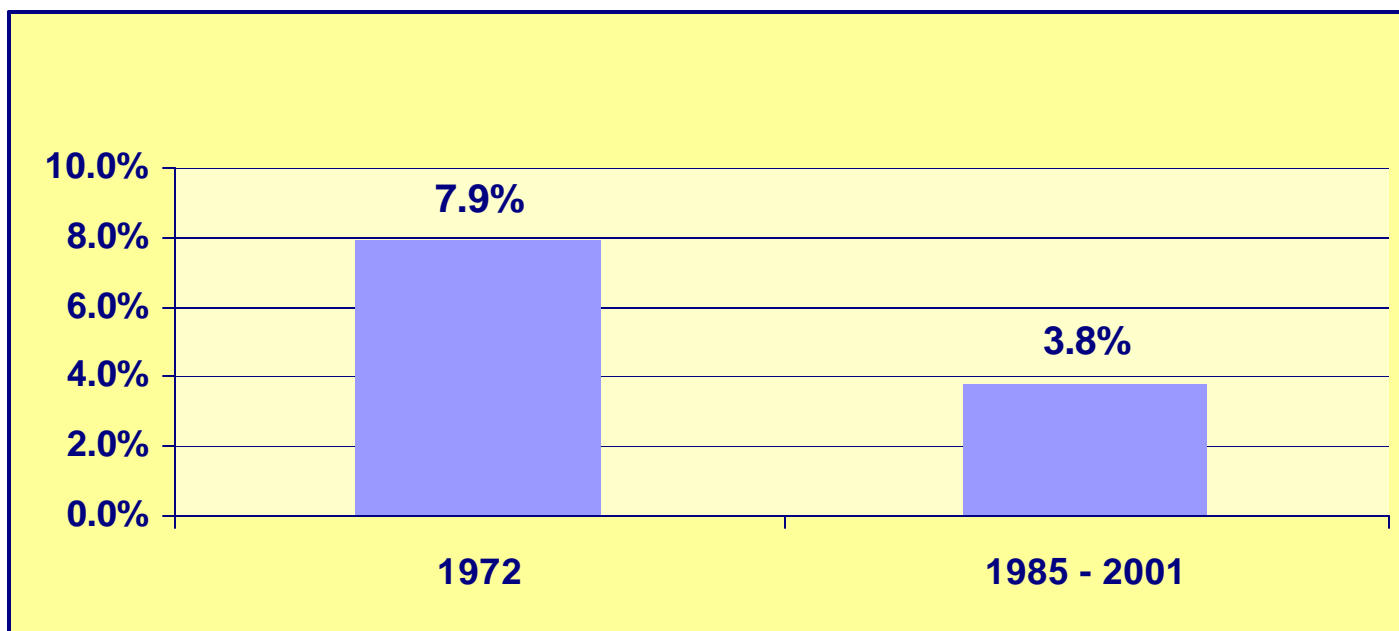
### **Patient Safety Efforts Do More than Caps to Reduce Lawsuits & Insurance Premiums**

- In 1985 the American Society of Anesthesiologists (ASA) initiated an effort to study malpractice claims in order to limit their liability exposure.
- ASA established a Closed Claims Project at the University of Washington Medical School. They gathered claims files from 35 different insurers to look for patterns of problems.
- The outcome of this Manhattan Project-like commitment was the issuance of standards and procedures to avoid injuries that resulted in savings beyond the wildest dreams of any “tort reformer.”



**Figure 21**

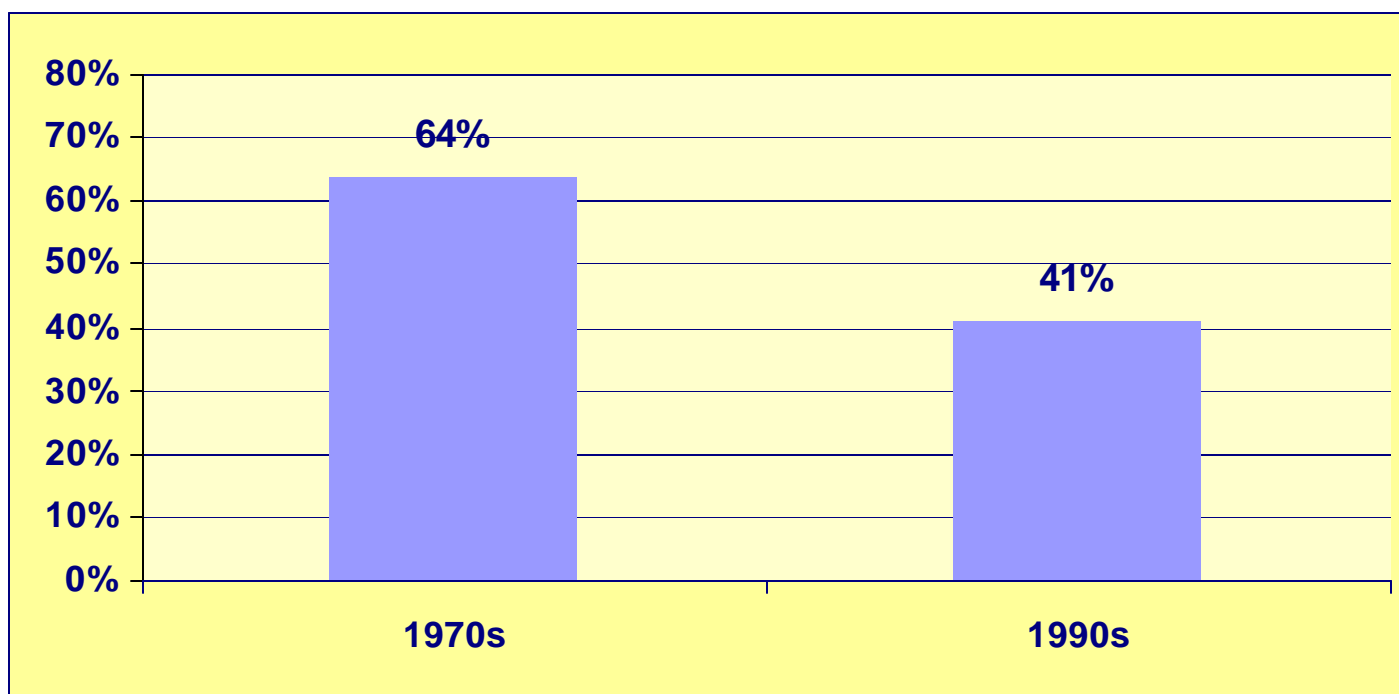
**Percent of Malpractice Claims Involving Anesthesiologists**



Sources: U.S. Department of Health, Education and Welfare, Secretary's Commission on Medical Malpractice, 1973; Physician Insurers Association of America, Cumulative Data Sharing Report, January 1, 1985 – December 31, 2001.

**Figure 22**

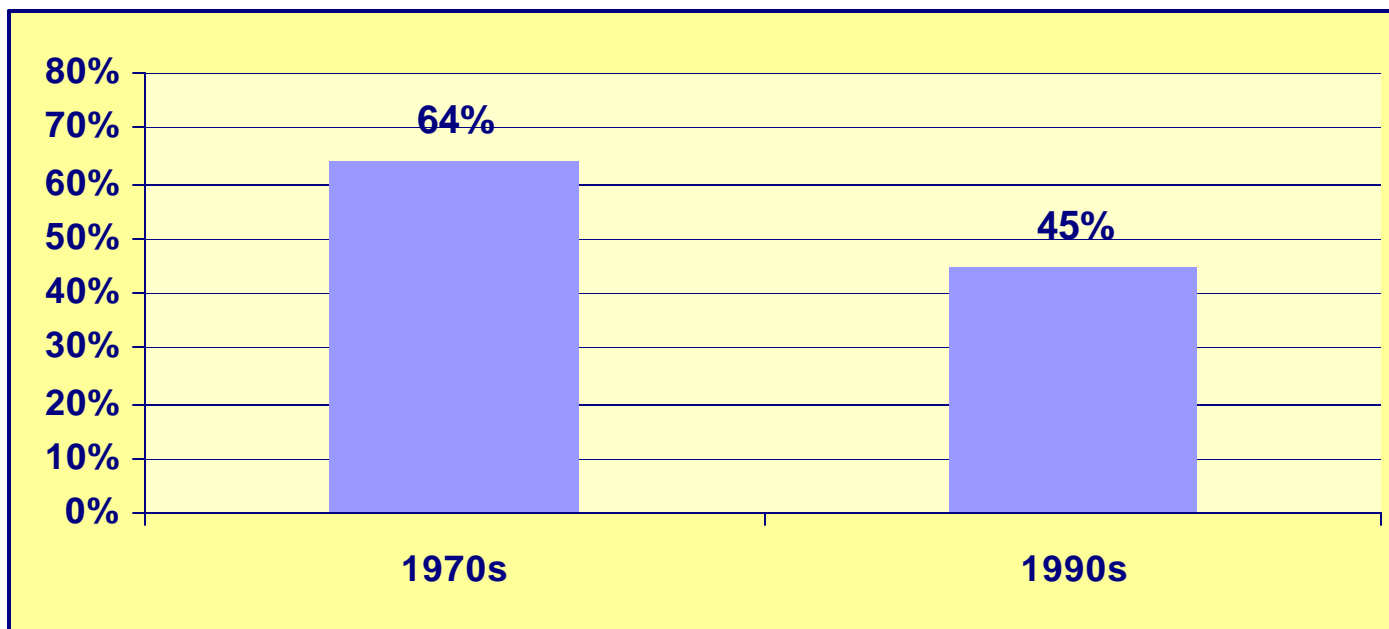
**Anesthesia Claims Involving Permanent Disability or Death  
1970s and 1990s**



Source: American Society of Anesthesiologists, "Closed Claims Project Shows Safety Evolution," 2001.

**Figure 23**

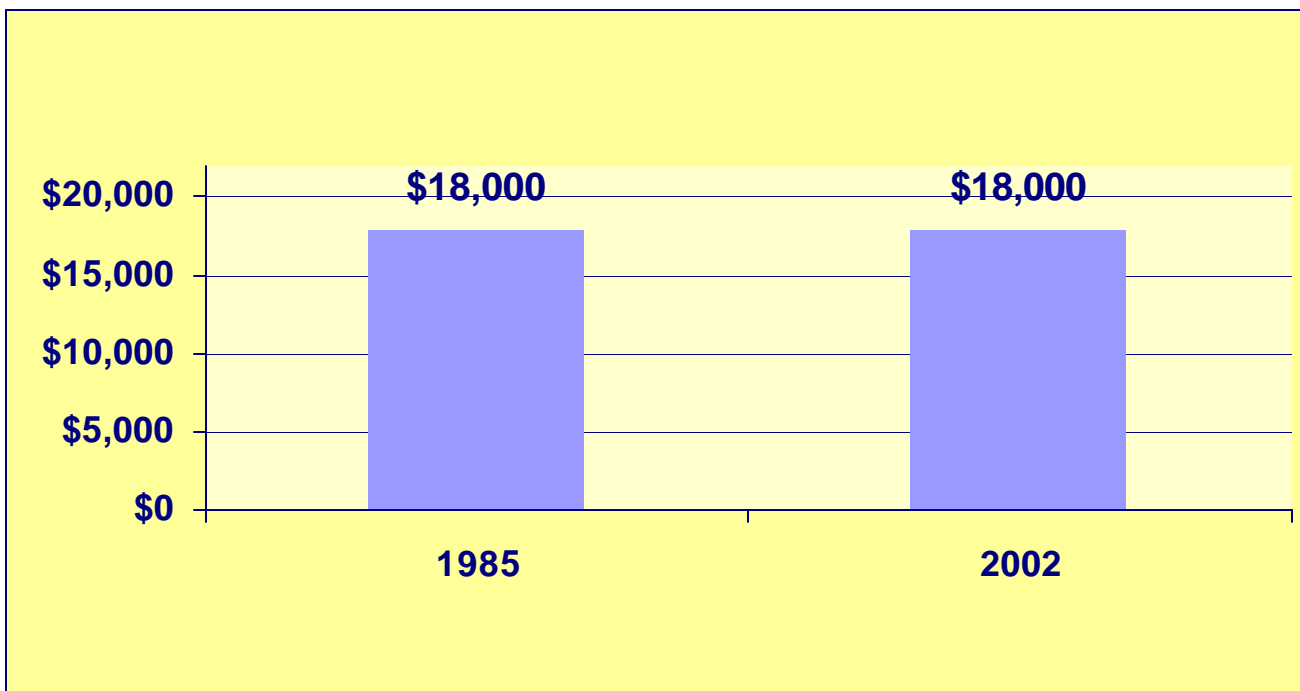
**Percent of Anesthesia Claims Closed with Payment  
1970s and 1990s**



*Source:* American Society of Anesthesiologists, "Closed Claims Project Shows Safety Evolution," 2001.

**Figure 24**

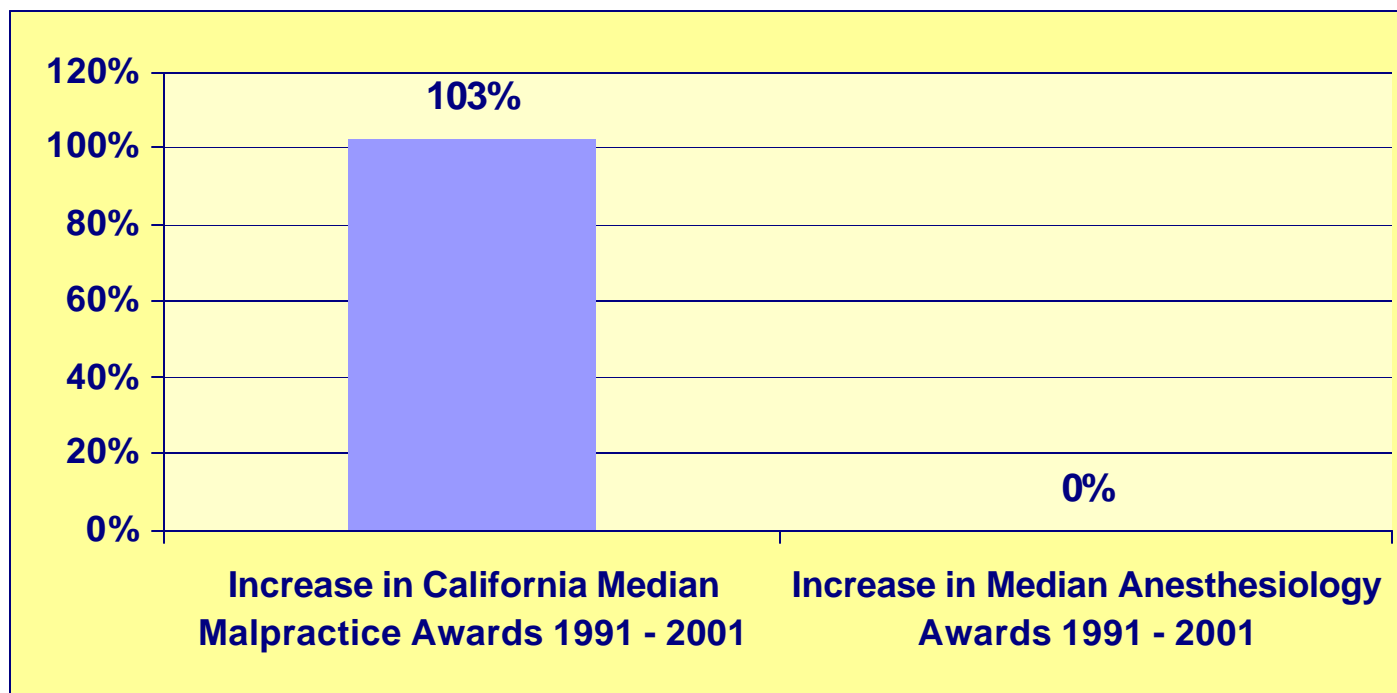
**Average Premium for Anesthesiologists  
1985 and 2002**



*Source:* American Society of Anesthesiologists, "Another Malpractice Insurance Crisis Brewing for Anesthesiologists?," June 2002.

**Figure 25**

**Effectiveness of Caps vs. Patient Safety in Reducing Awards**



Sources: National Practitioner Data Bank, 2001 Annual Report; American Society of Anesthesiologists, "Closed Claims Project Shows Safety Evolution," 2001.

### **Section III**

**Medical Mutual's Criticism of Public Citizen's Study *The Facts About Medical Malpractice in Maryland* Is Fatally Flawed**

## **1) Tillinghast's critique of Public Citizen's use of 1996 data lacks merit:**

- Tillinghast claims that Public Citizen's use of 1996 as the beginning year for the analysis of trends produces biased results concerning the number of malpractice claims, number of payouts, and the amount of payouts.
- Tillinghast failed to provide empirical data that supports its claim that 1996 was an unusually high or distorted year.
- Tillinghast claimed that 1996 was an unusually high point, but, when viewed in context with nation-wide data that assertion fails.
- Tillinghast speculated, admittedly without knowing, that amendments to the state's arbitration statute may have caused a spike in filings. However the facts do not support that speculation.
- Tillinghast did not claim a "crisis" existed until 2003. If 1996 was, in fact an unusual year, Tillinghast's actions were inconsistent with that belief. Moreover, from 1997-2002, Tillinghast returned dividends to its policyholders averaging 27.2 percent a year or more than 27 cents on each dollar paid in premiums.

## **2) Tillinghast's critique of Public Citizen's use of National Practitioner Data Bank (NPDB) data lacks merit:**

- Tillinghast overlooks the fact that the NPDB is the most comprehensive source of information about *physician* medical malpractice claims.
- Tillinghast ignores the fact that NPDB data has been widely used by others for similar types of medical malpractice research, including the U.S. General Accounting Office.
- Tillinghast contends that insurance carriers frequently fail to make timely reports of malpractice payouts to the NPDB and that this failure may bias the 1996 data. However the GAO study of this problem does not demonstrate a systemic bias in NPDB data that would discredit trends in the number of malpractice payouts.



### **3) Medical Mutual's own data supplied in Tillinghast's report reinforces Public Citizen's key points that there is no liability insurance crisis caused by lawsuits:**

- Medical Mutual's total medical malpractice payouts (described in Fig. 9, TTP Report, p. 25) rose by \$6.0 million from 1994 through 2002, 12.2 percent overall or 1.5 percent a year. Adjusted for medical services inflation the total payouts actually *declined* \$8.9 million from 1994 through 2002, -18.2 percent overall or -2.3 percent a year. This trend is consistent with Public Citizen's finding for all Maryland insurer payouts.
- Medical Mutual's average medical malpractice payout (described in Fig.10, TTP Report, p.26) rose by \$25,000 from 1994 through 2002, 10.4 percent overall or 1.3 percent a year. Adjusted for medical services inflation the average payout actually *declined* \$46,569 over the same period, -19.4 percent overall or -2.4 percent a year. This trend is consistent with Public Citizen's finding for all Maryland insurer payouts.