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Joan Claybrook, President

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## NEWS RELEASE

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### **New 2002 Government Data Disputes Malpractice Lawsuit “Crisis” in New Jersey**

#### ***Malpractice Payouts Declined as Insurance Premiums Spiked; 6.1 Percent of New Jersey Doctors Are Responsible for 54.8 Percent of Malpractice Payouts***

WASHINGTON, D.C. – New government data show that both the number and amount of payments to medical malpractice victims declined in New Jersey in 2002, casting further doubt on the assertion that lawsuits are responsible for doctors’ insurance premium increases.

According to a Public Citizen analysis of new federal National Practitioner Data Bank (NPDB) records for last year, the total damages paid to New Jersey medical malpractice victims declined by 29.3 percent, from \$321.9 million in 2001 to \$227.6 million in 2002. When adjusted for medical services inflation the decline was even more dramatic – 32.6 percent. (See Figure 1 in the attachment.) The cost of medical care typically represents the greatest cost in a medical malpractice payout.

The number of medical malpractice payouts in New Jersey decreased by 29.8 percent, from 933 in 2001 to 655 in 2002, while the number of awards over \$1 million dropped from 50 to 32 during that same period – a 36 percent decline.

The mean payment per malpractice victim increased, but when adjusted for medical services inflation, the mean payment declined by 3.8 percent. The data bank, a U.S. government agency, collects reports of every judgment or settlement paid to malpractice victims throughout the country by insurance companies on behalf of doctors.

The U.S. Senate is expected to vote Wednesday on legislation that would significantly limit patients’ ability to hold medical providers accountable for negligence. The bill, S. 11, would arbitrarily cap the amount of non-economic damages available to malpractice victims at \$250,000 – penalizing those most seriously harmed by doctors and other health care providers.

The bill's proponents claim that malpractice insurance rates are rising because of malpractice awards to patients, but all available data show that the legal system has no impact on insurance rates. Rather, insurance rates are tied to investment returns from the bond and stock markets and to the competitive economics of the insurance cycle.

"It's clear from these numbers that the insurance premium increases over the past year are not tied to lawsuits," said Joan Claybrook, president of Public Citizen. "The only thing that correlates with the premium increases is the decline in malpractice insurers' investment income."

"Given increasing health care costs, the decline in damages awarded means that malpractice payments are becoming an even more miniscule portion of the nation's overall health care costs," Claybrook said. In 2000, the total amount of premiums paid for malpractice insurance constituted 0.56 percent of all health care expenditures.

According to Public Citizen's analysis of 2002 NPDB data, a small number of New Jersey doctors are responsible for over half of all malpractice payments, yet disciplinary actions (license suspension or revocation, or a limit on clinical privileges) for these doctors have been few and far between. The data showed that:

- Just 6.1 percent of doctors in New Jersey made two or more malpractice payouts and were responsible for 54.8 percent of all payouts between 1990 and 2002. Just 1 percent of all doctors have made four or more malpractice payouts, amounting to 16.8 percent of all malpractice payouts in the state. (See Figure 2 in the attachment.)
- Only 9 percent (53 of 588) of New Jersey doctors who made three or more malpractice payouts have been disciplined. Only 15.6 percent (21 of 135) of those doctors who made five or more malpractice payouts have been disciplined. (See Figure 3 in the attachment.)

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Public Citizen is a national, nonprofit consumer advocacy organization based in Washington, D.C. For more information, please visit [www.citizen.org](http://www.citizen.org).

**Figure 1**  
**Medical Malpractice Payouts in New Jersey, 2001 to 2002**

|                          | Number of Payouts | Total Amount of Payouts | Total Payouts Adjusted for Medical CPI (in 2001 dollars) | Average Payout | Average Payout Adjusted for Medical CPI (in 2001 dollars) | Payouts Of \$1 Million or More |
|--------------------------|-------------------|-------------------------|--|----------------|---|--------------------------------|
| 2001                     | 933               | \$321,869,050           | \$321,869,050  | \$344,982      | \$344,982   | 50                             |
| 2002                     | 655               | \$227,530,750           | \$217,088,780  | \$347,375      | \$331,433   | 32                             |
| <b>Change, 2001-2002</b> | <b>-29.8%</b>     | <b>-29.3%</b>           | <b>-32.6%</b>  | <b>0.7%</b>    | <b>-3.8%</b>  | <b>-36.0%</b>                  |

Sources: National Practitioner Data Bank, Sept. 1, 1990 – Dec. 31, 2002. Bureau of Labor Statistics – Medical Services CPI.

**Figure 2**  
**Number of Medical Malpractice Payouts to Patients and Amounts Paid by New Jersey Doctors, 1990-2002**

| Number of Payout Reports | Number of Doctors that Made Payouts | Percent/Total Doctors (25,110)* | Total Number of Payouts | Total Amount of Payouts | Percent of Total Number of Payouts |
|--------------------------|-------------------------------------|---------------------------------|-------------------------|-------------------------|------------------------------------|
| All                      | 4,653                               | 18.5%                           | 6,884                   | \$1,817,048,200         | 100.0%                             |
| 1                        | 3,112                               | 12.4%                           | 3,112                   | \$846,518,300           | 45.2%                              |
| 2 or More                | 1,541                               | 6.1%                            | 3,772                   | \$970,529,900           | 54.8%                              |
| 3 or More                | 588                                 | 2.3%                            | 1,993                   | \$510,162,400           | 29.0%                              |
| 4 or More                | 273                                 | 1.0%                            | 1,154                   | \$282,844,000           | 16.8%                              |
| 5 or More                | 135                                 | 0.5%                            | 662                     | \$156,039,050           | 9.6%                               |

\*Based on New Jersey's population of doctors as calculated by the American Medical Association for 1997, the closest year for which such data is available to the mid-point of the time period studied.

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

**Figure 3**  
**Number of New Jersey Doctors with Two or More Medical Malpractice Payouts Who Have Been Disciplined (Reportable Licensure Actions), 1990-2002**

| Number of Payment Reports | Number of Doctors that Made Payouts | Number of Doctors with One or More Reportable Licensure Actions | Percent of Doctors with One or More Reportable Licensure Actions |
|---------------------------|-------------------------------------|---|--|
| 2 or More                 | 1,541                               | 99  | 6.4%   |
| 3 or More                 | 588                                 | 53  | 9.0%   |
| 4 or More                 | 273                                 | 37  | 13.6%  |
| 5 or More                 | 135                                 | 21  | 15.6%  |
| 10 or More                | 13                                  | 0   | 0.0%   |

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