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## **States Without Medical Malpractice Damage Caps Have Better Emergency Care and More of It**

### ***Report Card Issued by Board of Emergency Physicians Undermines Claim That Patients Must Choose Between Legal Rights and Getting Emergency Care***

A state-by-state assessment of emergency medical care released in January 2006 by the American College of Emergency Physicians (ACEP)<sup>1</sup> gives states without caps on non-economic damages higher marks for access to care, quality of care and patient safety than states that have instituted restrictions on medical negligence lawsuits. This is significant because the ratings come from a medical specialty group that has persistently warned of doctor shortages unless patients' legal rights are cut back.

Ironically, ACEP characterized the study as demonstrating the "serious condition" of emergency health care in the U.S. But an examination of the details and correlation of availability and quality with a state's liability scheme brings out a very different picture. The contradictory is grounded in the fact that ACEP counts a state's so-called "medical liability environment"—the extent to which limits have been imposed on medical malpractice lawsuits—as 25 percent of that state's overall score. This artificially distorts the state's emergency medicine grade by throwing a non-medical, subjective factor into the mix.

Nevertheless, the inclusion of a liability environment rating allowed Public Citizen to see whether ACEP's findings would support doctors' oft-repeated claim: enacting medical malpractice lawsuit restrictions (such as capping a victim's pain and suffering damages at \$250,000) leads to greater access to emergency services and higher-quality care, while allowing injured patients full and fair recourse to the courts results in physician exodus and inadequate coverage. ACEP's assessment disproved the doctors' contention. It found that states with few barriers to lawsuits had the greatest number of emergency doctors and facilities per capita, while those with low, hard damage caps and other measures that discourage legal claims were more poorly served.

Below are highlights from the ACEP report.

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<sup>1</sup> The American College of Emergency Physicians, The National Report Card on the State of Emergency Medicine, January 2006, [www.acep.org](http://www.acep.org).

- The top states for access to emergency care were all at the bottom of the heap in terms of ACEP’s medical liability environment scale. Not one of them has a hard \$250,000 cap on non-economic damages.

	<u>Access to Care</u>	<u>Liability Environment</u>
District of Columbia	A+	F
Pennsylvania	A	F
Massachusetts	A	D-
Maine	A	D
Rhode Island	A	F
Ohio	A-	D
Connecticut	A-	F

- By contrast, the states that earned the highest marks on ACEP’s medical liability environment scale received significantly lower grades for access to care.

	<u>Access to Care</u>	<u>Liability Environment</u>
Texas	D+	A+
California	C	A+
Montana	C+	A-
Nevada	D+	A-
South Carolina	C	B+
Georgia	D+	B-
Colorado	C+	B-

- Significantly, most states with failing grades on ACEP’s liability environment scale received average-to-high scores in the “quality and patient safety” category. This tends to support the contention of patient advocates that removing the threat of full legal accountability may result in poorer care and a more dangerous environment for patients.

	<u>Quality and Patient Safety</u>	<u>Liability Environment</u>
New Jersey	A+	F
Connecticut	A+	F
District of Columbia	A-	F
Pennsylvania	A-	F
Maryland	B+	F
Rhode Island	B+	F
North Carolina	C	F
Vermont	C	F
Tennessee	C	F

ACEP’s report is available at [www.acep.org](http://www.acep.org).