

**Medical Malpractice  
Payout Trends 1991 – 2004:  
Evidence Shows Lawsuits  
Haven't Caused Doctors' Insurance Woes**

**Public  
Citizen**  
**Congress Watch  
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## **Acknowledgments**

This report was written by Public Citizen's Congress Watch Civil Justice Research Director Chris Schmitt with editorial advice from Congress Watch Director Frank Clemente.

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# Medical Malpractice Payout Trends 1991 – 2004: Evidence Shows Lawsuits Haven't Caused Doctors' Insurance Woes

As doctors descend on Washington April 20 to urge limits on damages their patients can recover for medical negligence, the latest national data on physician malpractice payments shows there is no evidence that the spike in some doctors' insurance rates is due to lawsuits and patients seeking compensation in the legal system. This can be seen in two major ways, based on a Public Citizen analysis of information from the federal government's National Practitioner Data Bank (NPDB):

- **Activity on the Decline:** Measures such as the number, and total value, of malpractice payouts to patients have been flat since 1991 and show a significant decline since 2001, when the so-called "crisis" of escalating insurance rates began. Yet doctors and their insurers continue to complain of a malpractice liability system out of control.
- **The System is Working:** The medical liability system is not one of "jackpot" justice, in which patients go to court and score big awards based on flimsy claims. Instead, evidence shows that the system is working as designed: Those with minor injuries receive little compensation, while the great bulk of malpractice awards are for cases involving major, debilitating injuries – or death. *This is the first year such information on the degree of patient harm is available from the NPDB, and it directly challenges the signature refrain of those seeking to limit recovery for damages.*

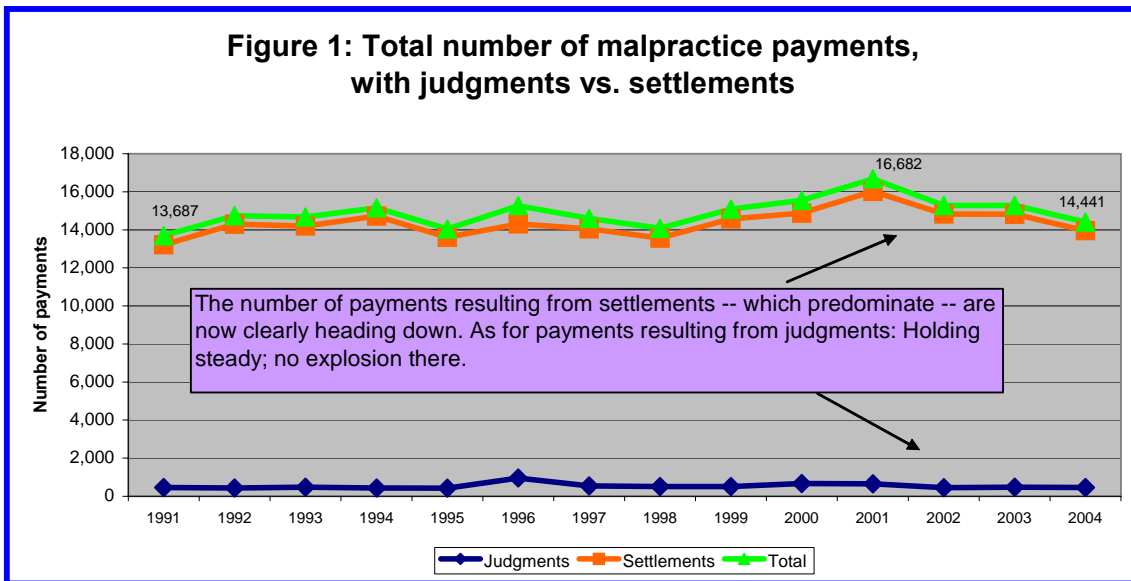
The latest NPDB information analyzed by Public Citizen also underscores that the real medical malpractice crisis today is inadequate patient safety, not lawsuits or the legal system. Rather than complain about malpractice liability, doctors should improve their own performance, and thus better protect their patients. One-third of malpractice cases that produced a malpractice payout in 2004<sup>1</sup> – 4,158 – involved patient deaths. Yet, as a landmark study by the Institute of Medicine in 1999 showed, an estimated 44,000 to 98,000 patient deaths occur each year following preventable medical errors in hospitals. Thus, stemming preventable errors there alone would conservatively prevent 10 times as many deaths as are now accounted for by malpractice cases.

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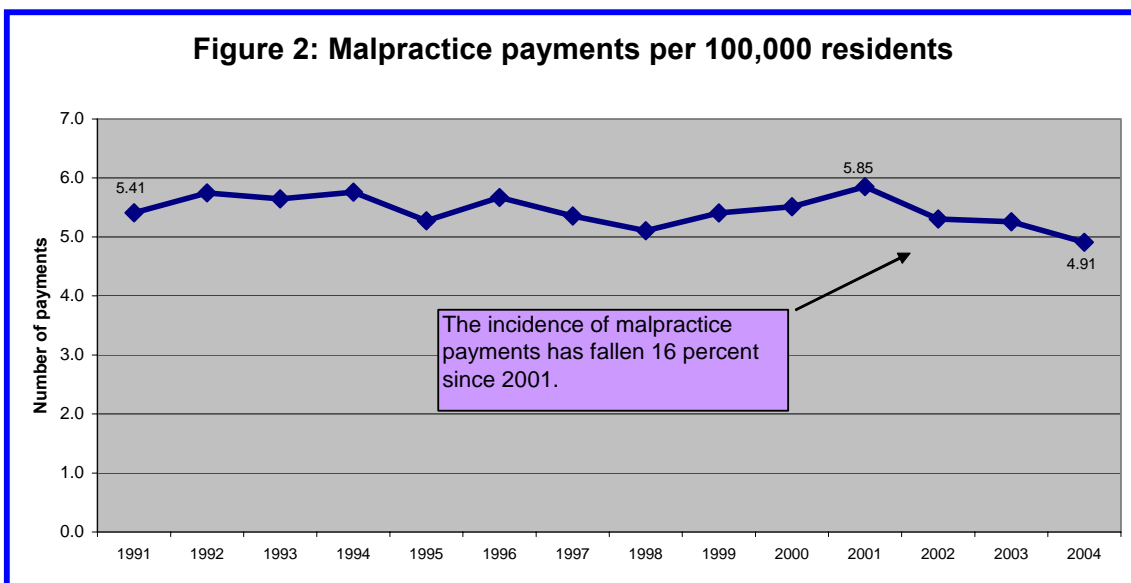
<sup>1</sup> This data for the period January 31 forward.

# Annual Number of Malpractice Payments Is Down

Doctors and insurers have been complaining about a growing liability crisis. But the number of malpractice payments paid on behalf of doctors – chiefly by their insurance companies – has fallen the last three years, from 16,682 in 2001 to 14,441 in 2004, a drop of 13.6 percent. The 2004 number is only 5.5 percent higher than the 13,687 payments recorded for 1991. (Figure 1)

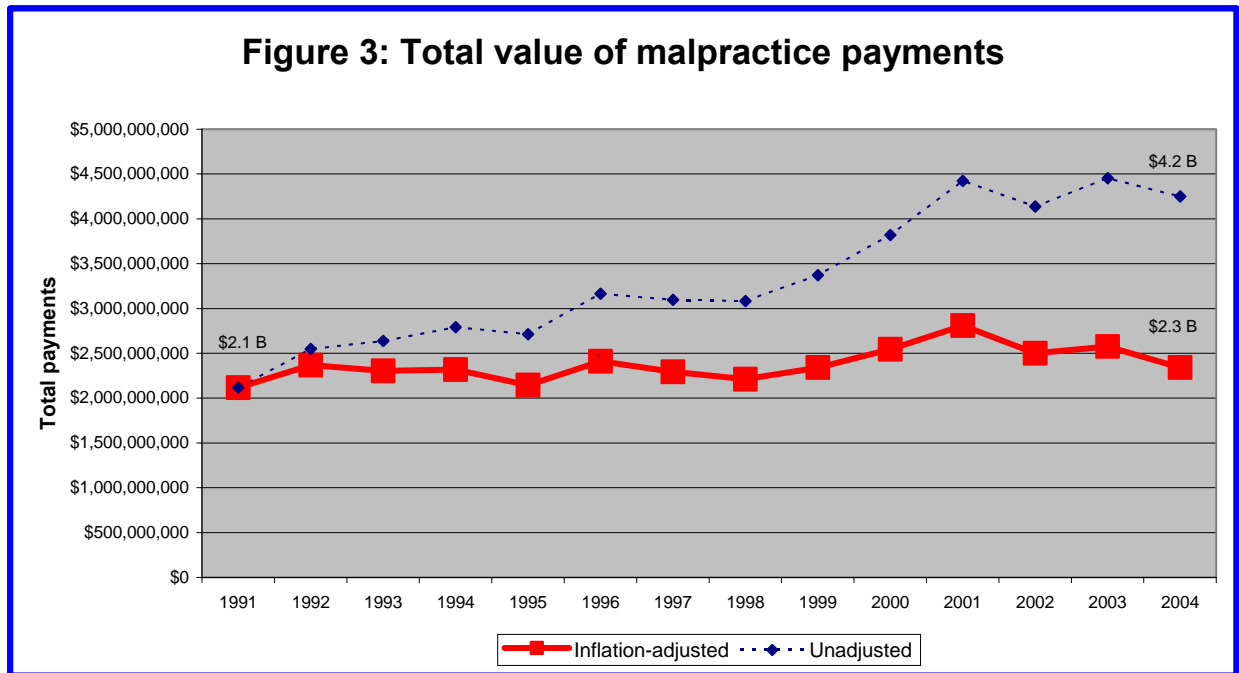


Adjusting for population growth, the number of payments per 100,000 people has fallen from 5.85 to 4.91 from 2001 to 2004, a decline of 16.1 percent. Since 1991, the number of payments per 100,000 population has dropped by 9.2 percent, from 5.41. (Figure 2)



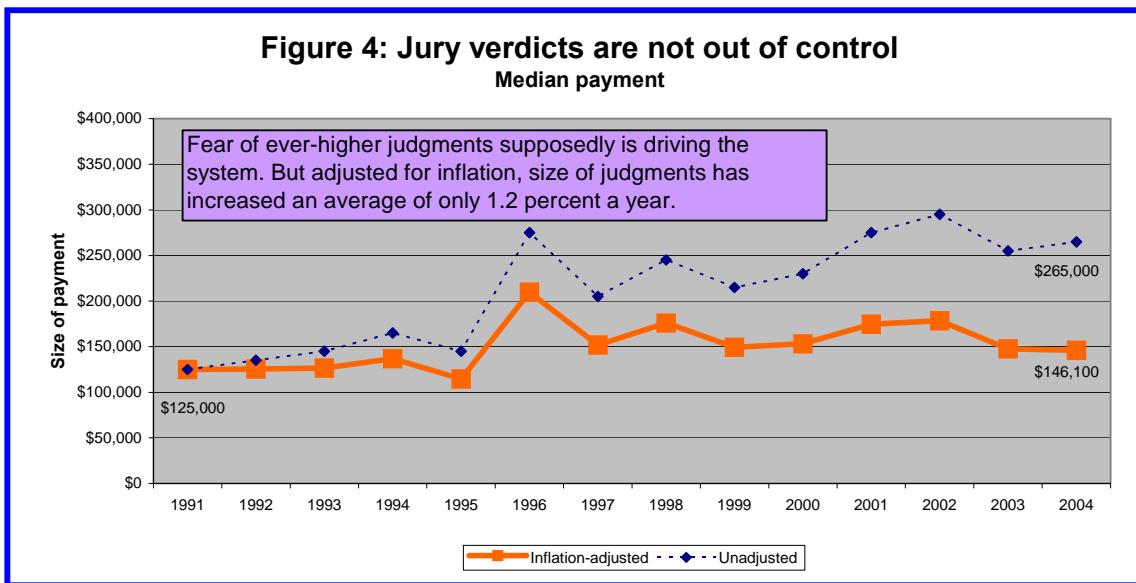
## Total Value of Malpractice Payments Is Flat Since 1991

Total malpractice payments appear to have jumped markedly, from \$2.1 billion in 1991 to \$4.2 billion in 2004. However, from 1991 to 2004, the inflation-adjusted amount has changed little, rising from \$2.1 billion to \$2.3 billion – an average annual increase of only 0.8 percent. (Figure 3)



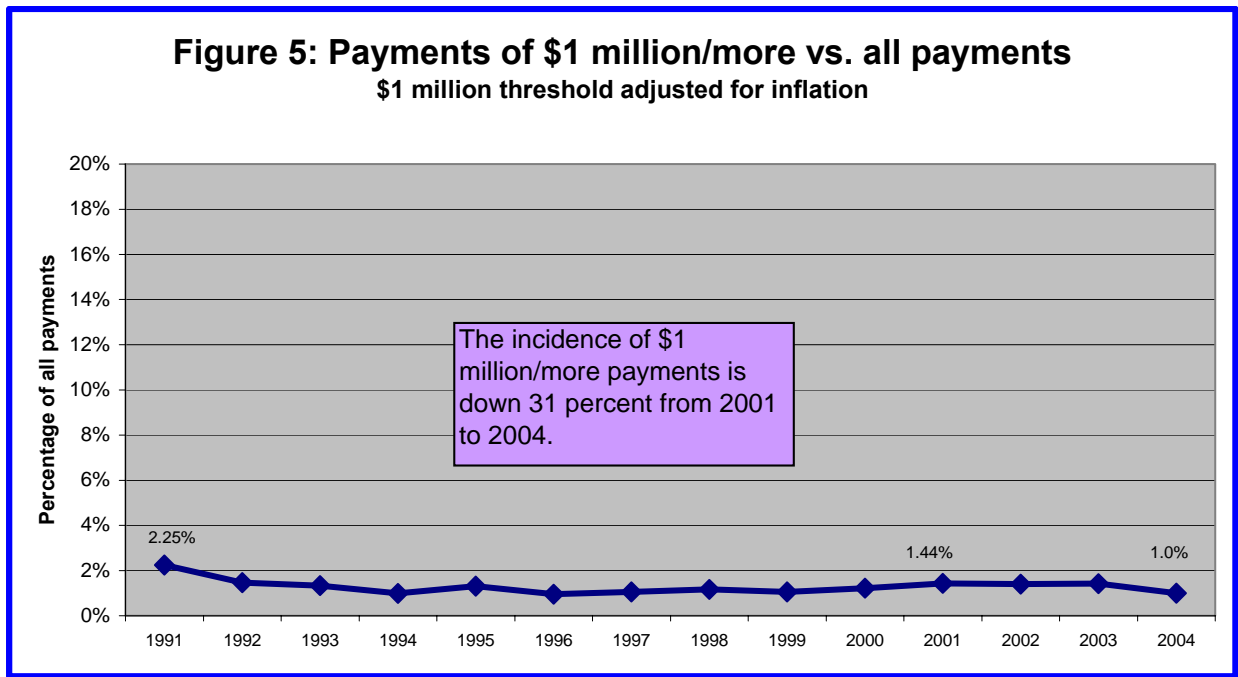
# Jury Verdicts Are Not Out Of Control

Opponents of the current system say fear of runaway jury verdicts is whipping the system, driving malpractice payments ever higher. The median size of payments from judgments appears to have soared, from \$125,000 in 1991 to \$265,000 in 2004. But adjusted for inflation, the median payment grew from \$125,000 in 1991 to \$146,100 in 2004 – an average annual increase of only 1.2 percent. (Figure 4)



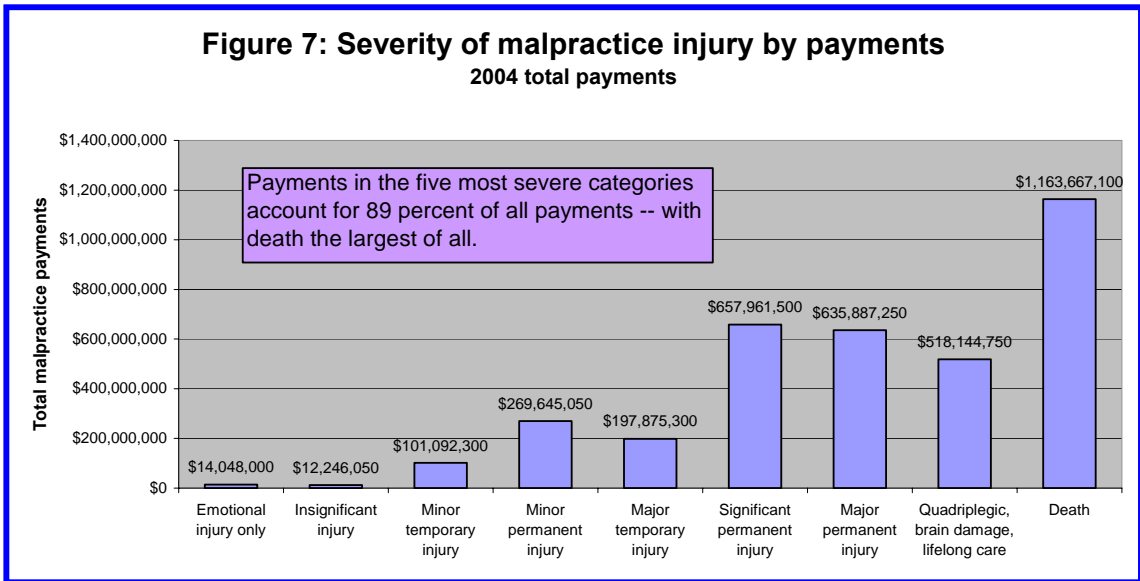
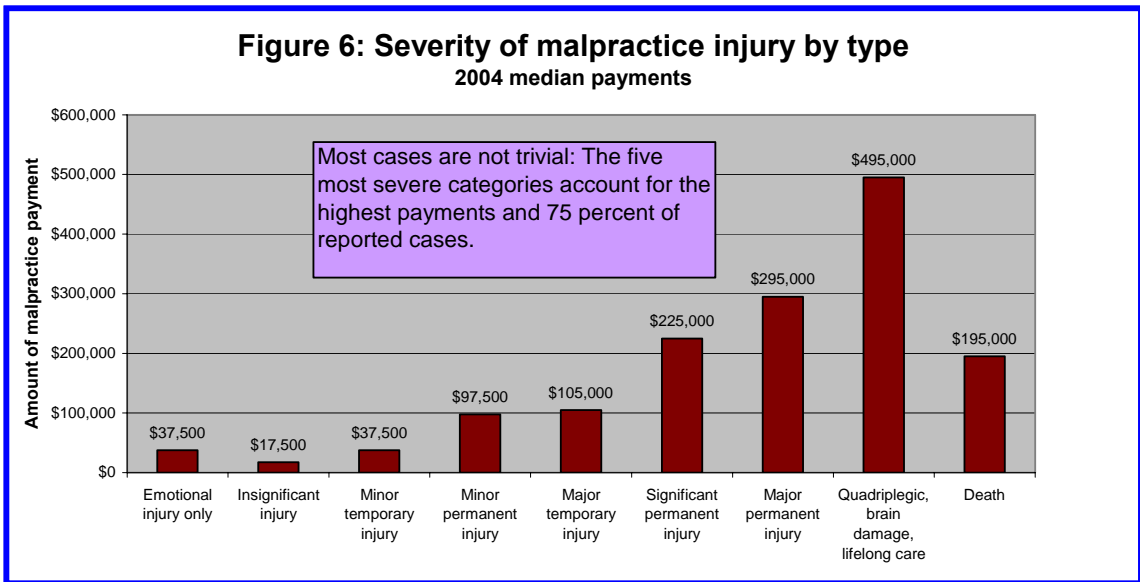
## There Has Been a 56 Percent Decline In Multi-Million-Dollar Payments

Those seeking to limit patients' ability to recover complain of a surge in multi-million-dollar payments. But the proportion of payments of \$1 million or more, adjusted for inflation, is down 56 percent from 1991 to 2004, from 2.25 percent of all payments to just 1 percent of all payments. Even during the so-called "crisis" from 2001 to 2004, the proportion of large payments declined 31 percent, from 1.44 percent of payments to 1.0 percent. (Figure 5)



# The System Is Working – Malpractice Payments Match the Degree of Harm

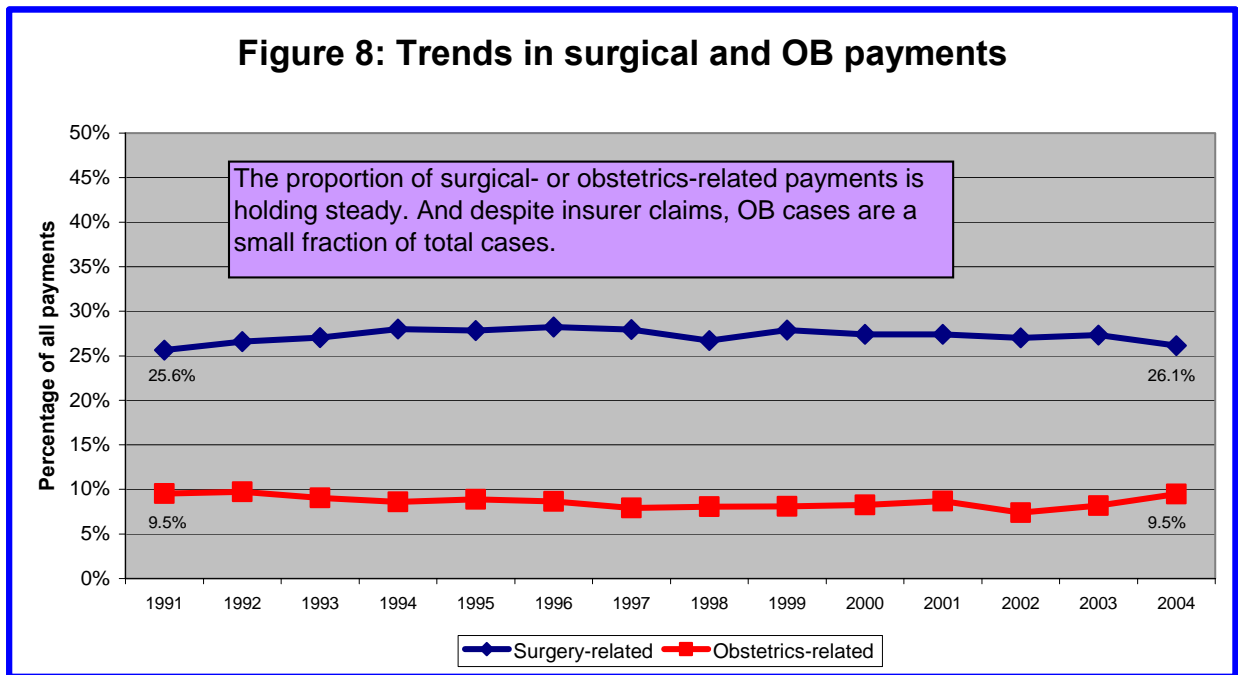
Rather than providing windfalls to patients seeking compensation for minor problems, the medical negligence system is rational in its outcomes, new data reported to NPDB shows. Three-quarters of payments for 2004 involved major or significant injuries, or death, and these most severe cases account for 89 percent of the value of payments made. Minor injuries, by contrast, receive comparatively little. (Figure 6, Figure 7)





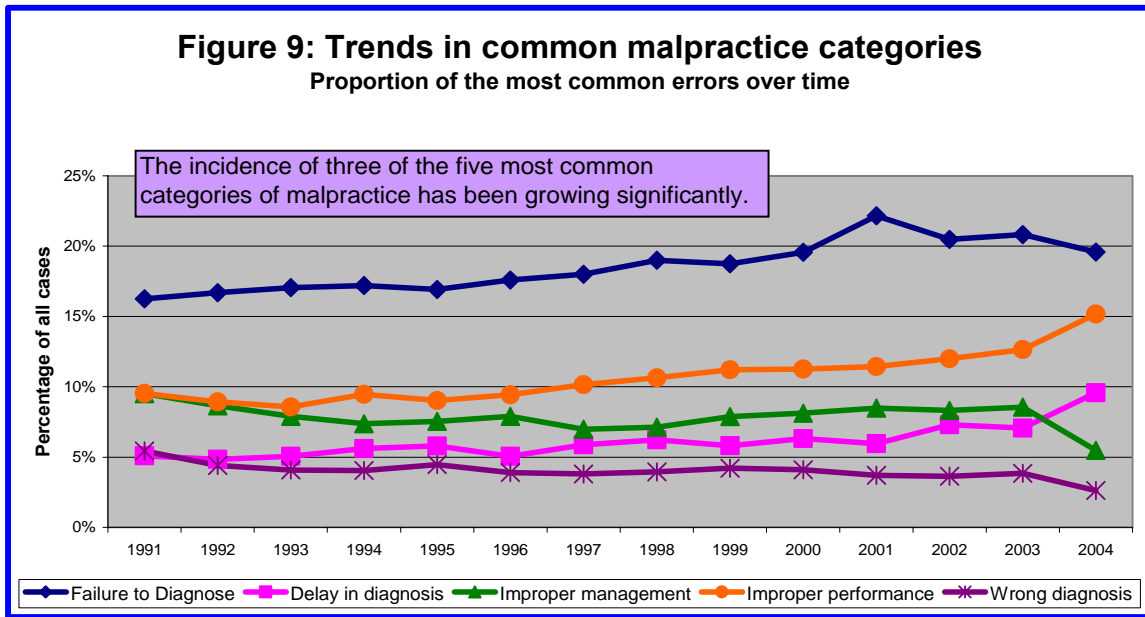
## The Proportion of Surgical and Obstetrics Payouts Has Not Increased Since 1991

Surgeons and obstetricians complain the loudest about big jumps in malpractice insurance rates. But the proportion of surgical and obstetrics payouts is virtually unchanged from 1991 to 2004. In 1991, 9.5 percent of all payouts were for obstetrics cases; in 2004, the figure was the same. Surgical cases accounted for 25.6 percent of payments in 1991, and 26.1 percent of payouts last year. (Figure 8) This suggests that if these doctors' premiums have jumped, the explanation does not lie in the number of malpractice payouts.

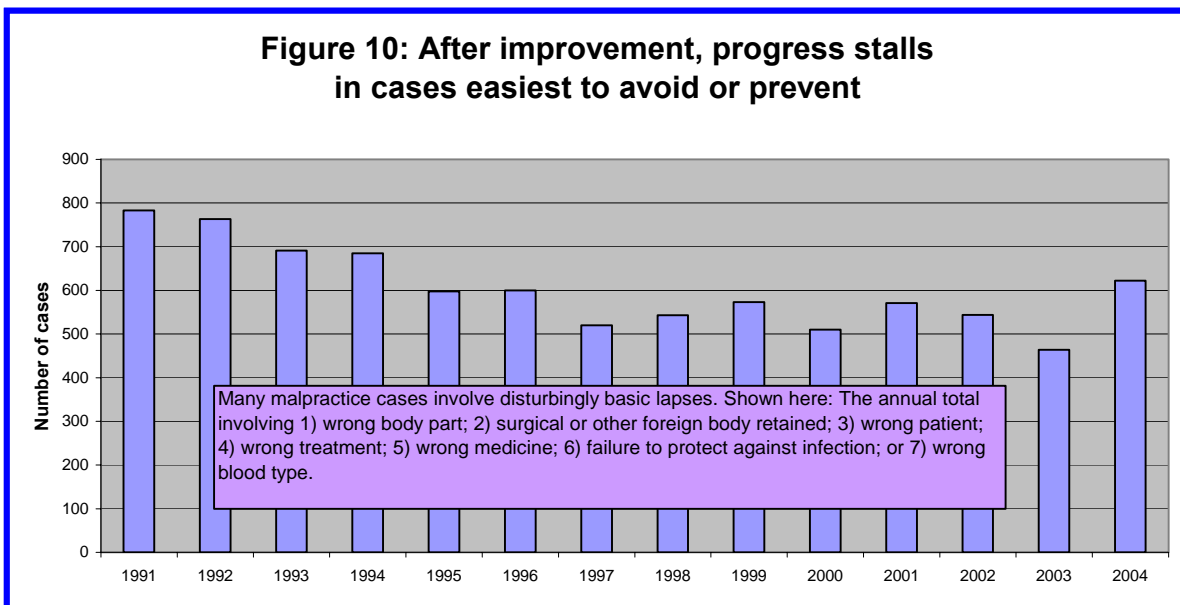


## Most Kinds of Common, Preventable Errors Have Increased Over Time

The proportion of several of the most common kinds of errors that produce malpractice payouts has increased significantly over time, while progress on cutting the number of errors that are easiest to avoid or prevent has stalled. “Failure to Diagnose” cases, for example, have grown from 16 percent of payouts in 1991 to 20 percent in 2004. “Improper Performance” cases have grown from 10 percent to 15 percent of payouts. (Figure 9)



The number of payments for such things as leaving a surgical instrument behind or operating on the wrong body part fell from 783 in 1991 to 520 in 1997, but has generally been flat since then, except for a disturbing increase in 2004 of 34 percent. (Figure 10)



## 5.5 Percent of Doctors Are Responsible for 57.3 Percent of Medical Malpractice Payouts

The insurance and medical communities argue that medical malpractice litigation constitutes a giant “lottery,” in which lawsuits are random events unrelated to the care provided by a physician. If the tort system is a lottery, it is indeed rigged, because some doctors’ numbers come up much more often than others. According to NPDB data, a small percentage of doctors has paid multiple claims, and it is these doctors who are responsible for much of the malpractice in America. By focusing attention on repeat offenders, overall patient safety can be dramatically improved.

- Just 5.5 percent of doctors have been responsible for 57.3 percent of all malpractice payouts to patients, according to NPDB data from September 1990 through 2004. Each of these doctors has made at least two payouts.
- Just 2.1 percent of doctors, each of whom has had three or more malpractice payouts, were responsible for 32.1 percent of all payouts.
- Only 1 percent of doctors, each of whom has had four or more malpractice payouts, were responsible for 19.6 percent of all payouts.
- Nearly 83 percent of doctors have never had a medical malpractice payout since the NPDB was created in 1990.

**Figure 11: Number and Amounts of Medical Malpractice Payouts To Patients Paid on Behalf of Doctors, 1990-2004**

Number of Payout Reports	Number of Doctors Who Made Payouts	Total Number of Payouts	Percent/Total Doctors (777,859)*	Percent of Total Number of Payouts	Total Amount of Payouts
All	132,952	210,680	17.1%	100.0%	\$46,900,858,250
1	90,062	90,055**	11.6%	42.7%	\$19,638,674,150
2 or more	42,890	120,625	5.5%	57.3%	\$27,262,184,100
3 or more	16,285	67,625	2.1%	32.1%	\$15,206,319,500
4 or more	7,462	41,287	1.0%	19.6%	\$9,252,913,450
5 or more	3,739	26,475	0.5%	12.6%	\$5,847,927,150

\* Based on number of physicians in 1998, the midpoint of the period studied, as reported by the American Medical Association.

\*\* Numbers in columns two and three of this row do not match because a very small number of payment reports in the NPDB do not include an amount

## Doctors with Repeated Malpractice Payouts Suffer Few Consequences

State medical boards and health care providers have not done enough to rein in those doctors who repeatedly make medical errors and commit medical negligence. According to NPDB data, the National Practitioner Data Bank and Public Citizen’s analysis of NPDB data, disciplinary actions such as license suspension or revocation have been infrequent for physicians with multiple malpractice payments.

- Only 8.3 percent of doctors who made two or more malpractice payouts were disciplined by their state board.
- Only 11.4 percent of doctors who made three or more malpractice payouts were disciplined by their state board.
- Only 14.6 percent of doctors who made four or more malpractice payouts were disciplined by their state board.
- Only 32.5 percent of doctors who made 10 or more malpractice payouts were disciplined by their state board.

**Figure 12: U.S. Doctors with Two or More Medical Malpractice Payouts Who Have Been Disciplined (Reportable Licensure Actions), 1990 – 2004**

Number of Payout Reports	Number of Doctors Who 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	42,890	3,561	8.3%
3 or more	16,285	1,861	11.4%
4 or more	7,462	1,092	14.6%
5 or more	3,739	666	17.8%
10 or more	434	141	32.5%

## Examples of Repeat Offender Doctors Who Have Gone Undisciplined

The extent to which doctors have multiple payouts to patients for medical malpractice claims and are not disciplined is illustrated by the following NPDB descriptions of 15 physicians licensed to practice medicine who have made between 4 and 30 malpractice payouts totaling more than \$8 *million* per doctor yet have not been disciplined by their state medical boards. The NPDB does not disclose to the public the identity of these physicians.

- **Physician Number 26701** had at least 6 malpractice payouts between 1994 and 2002, twice for improper management of pregnancies, an improperly performed C-section, an improperly performed procedure, a retained foreign body during surgery and an unspecified obstetrics error. The damages add up to \$15,050,000.
- **Physician Number 122202** had at least 4 malpractice payouts between 1998 and 2002, twice for failure to diagnose, a wrong diagnosis and an improperly managed surgery. The damages add up to \$12,890,000.
- **Physician Number 24867** had at least 8 malpractice payouts between 1993 and 2002, four times for improperly performed surgeries, twice for unspecified monitoring errors and twice for unspecified surgical errors. The damages add up to \$12,712,000.
- **Physician Number 183018** had at least 4 malpractice payouts between 2002 and 2003, twice for improperly performed surgeries, a wrong diagnosis and an unspecified surgical error. The damages add up to \$12,625,000.
- **Physician Number 14052** had at least 14 malpractice payouts between 1991 and 2002, 12 times for delayed performance or improper management of obstetrics cases, once for wrong treatment or procedure and once for an unspecified obstetrics error. The damages add up to \$10,175,000.
- **Physician Number 33059** had at least 30 malpractice payouts between 1993 and 2004, nine for failure to diagnose, five for unspecified errors, three for improper management of obstetrics cases, three for improper performance of surgery, two for retained foreign body during surgery, two for failure to treat, one for surgery on the wrong body part, one for failure to obtain consent for surgery, one for delay in treatment of fetal distress, one for failure to treat fetal distress, one for an improperly performed delivery and one for improper treatment. The damages add up to \$10,117,500.
- **Physician Number 33184** had at least 12 malpractice payouts between 1991 and 2004, eight for improper management, improper choice of delivery method, delay in performance or failure to treat fetal distress in obstetrics cases, one for improper performance of surgery, one for failure to diagnose and two unspecified errors. The damages add up to \$10,035,000.

- **Physician Number 493** had at least 6 malpractice payouts between 1992 and 2003, twice for improperly performed surgeries, twice for unspecified surgical errors, a failure to perform surgery and an unspecified treatment error. The damages add up to \$9,790,000.
- **Physician Number 23965** had at least 6 malpractice payouts between 1992 and 2003, twice for wrong diagnoses, twice for unspecified treatment errors, an improper management of surgery and an improper performance of surgery. The damages add up to \$9,390,000.
- **Physician Number 43947** had at least 21 malpractice payouts between 1992 and 2003, eight times for improperly performed surgeries, three times for unnecessary surgeries, twice for unspecified equipment errors, twice for surgeries on wrong body parts, a failure to obtain consent before surgery, a failure to obtain consent before blood work, a wrong treatment, an unspecified surgical error, a retained foreign body during surgery and an improper management of medication. The damages add up to \$8,722,500.
- **Physician Number 21426** had at least 4 malpractice payouts between 1991 and 2003, twice for delays in diagnosis, a failure to diagnose and an unspecified obstetrics error. The damages add up to \$8,577,500.
- **Physician Number 71555** had at least 4 malpractice payouts between 1995 and 2001, twice for failures to diagnose and twice for delays in surgical performance. The damages add up to \$8,435,000.
- **Physician Number 1995** had at least 6 malpractice payouts between 1993 and 2002, once for a retained foreign body during surgery, improper performance of surgery, a delay in treatment, a delay in performance in an obstetrics case and twice for unspecified errors. The damages add up to \$8,363,750.
- **Physician Number 127631** had at least 4 malpractice payouts between 1998 and 2003 for an improper delivery, a failure to treat fetal distress, improper management of an obstetrics case and a delay in diagnosis. The damages add up to \$8,285,000.
- **Physician Number 35472** had at least 17 malpractice payouts between 1991 and 2004, 12 times for improper performance of surgery, twice for improper management of surgery, once for equipment problems during surgery, once for failure to obtain consent for surgery and once for an unspecified surgical error. The damages add up to \$8,237,500.

## Background on the NPDB

The NPDB contains, among other things, reports on malpractice payments made on behalf of doctors by malpractice payers. Chiefly, these payers are insurance companies, but they also include other entities, such as state-run insurance funds and self-insured health care providers. Those making malpractice payments are required to report them to the NPDB under provisions of the Health Care Quality Improvement Act of 1986. Information provided to the NPDB is confidential, but the NPDB makes available a public use file that removes personal identifying information. The NPDB also contains information on disciplinary actions taken against doctors. Within the health care industry, the NPDB's major purpose is to provide a repository of data that those employing doctors can query for background checks.

**Please credit Public Citizen for information in this report as follows:** Public Citizen's analysis of malpractice payments as reported in the National Practitioner Data Bank public use file, for the years 1990 to 2004.

For a copy of data underlying any portion of this report, contact Chris Schmitt at 202-454-5115.

Notes: 1) The index used for inflation adjustments in this report is the Medical Care Services series of the Consumer Price Index - All Urban Consumers, as reported by the U.S. Department of Labor Bureau of Labor Statistics. From 1991 to 2004, this index has increased at an average annual rate of 4.7 percent. 2) NPDB data is available for a portion of 1990 and for full years thereafter. Most information in this report covers annual periods from 1991 to 2004. Where annual comparisons are not being made, Public Citizen's analysis covers the entire period of the database, e.g. 1990 to 2004.