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Medical Malpractice Payments Remained at Historic Low in 2013 Despite Slight Uptick

Acknowledgments

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Both the number and cumulative value of medical malpractice payments made on behalf of doctors increased slightly in 2013, marking the first such increase a decade., but remained at historic lows. Medical liability insurance rates, which are not precisely tied to claims data and may lag behind payment trends, continued to decrease.

Meanwhile, health care experts continued in 2013 to raise their estimates on the number of avoidable adverse events occurring in hospitals in the United States. Adverse events refer to harms resulting in deaths or injuries that occur in the course of care and do not stem from the conditions for which patients are hospitalized.

The number of payments on behalf of doctors rose from 9,370 in 2012 to 9,677 in 2013, according to Public Citizen's analysis of data in the federal government's National Practitioner Data Bank (NPDB), which receives records of such payments. The value of these payments in 2013 was $3.3 billion, which was 3.7 percent higher than in 2012, but lower (in actual as well as inflation-adjusted dollars) than in any year from 1999 to 2011. (NPDB data, which Public Citizen tabulates annually, are provided in the Appendix.)

These payments accounted for about 0.11 percent (*i.e.*, one-tenth of 1 percent) of national health care costs in 2013, roughly the same as in 2012.

Rates for liability insurance, meanwhile, are declining.

In the early 2000s, the American Medical Association declared that the liability climate in a dozen states had reached "crisis" proportions. "Doctors are disappearing from America's communities on a regular basis because of skyrocketing medical liability insurance premiums and an out-of-control legal system," then-American Medical Association President Richard Corlin said in 2002.[1]

At the time, the AMA was feverishly advocating for federal legislation to cap medical malpractice damages awards, which it said would lead to lower medical liability insurance rates for physicians. The AMA has continued this advocacy ever since.[2]

But today, the most alarmist rhetoric surrounding medical liability insurance rates is coming from the insurance industry, and it's over how much medical liability premiums have been driven down.

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[1] *AMA: Medical Liability Reaches Crisis in Texas,* Austin Business Journal (June 20, 2002), http://bit.ly/1sNsZIG.

[2] *See*, *e.g.*, *AMA To President Obama And Summit Attendees: Medical Liability Reform Essential To Curbing Health Costs*, HEALTH AFFAIRS (Feb. 24, 2010), http://bit.ly/1vPq1Br and *Medical Liability Reform*, AMERICAN MEDICAL ASSOCIATION (viewed on Oct. 9, 2014), http://bit.ly/1pVLx2v.

Medical liability rates vary by region and provider and are reported anecdotally. But the trend is downward. For instance, rates charged by the Doctors Company, a major provider of liability insurance, fell 35 percent between 2005 and 2012.[3] In 2013, the Doctors Company decreased rates from 2.8 percent to 45.7 in Oregon, Illinois, Idaho, Mississippi and Washington, reported *SNL Insurance Daily*.[4]

Medical Protective Co., a Berkshire Hathaway-owned provider of medical liability insurance, filed plans with regulators to decrease rates from 3.2 percent to 30.7 percent in Indiana, Kansas and Massachusetts, *SNL Insurance Daily* reported in 2014.[5]

"The medical space, no pun intended, is somewhat of a bloodbath, quite frankly, with rates continuing to fall off," W. Robert Berkley Jr. president of property and casualty firm W. R. Berkley Corp. , said during a 2013 earnings call.

Despite rate reductions, liability insurance companies have reaped enormous profits in recent years. For example, ProInsurance, the nation's fourth largest malpractice insurer, posted profit margins of 91 percent in 2011, 86 percent in 2012 and 64.7 percent in 2013, the *Milwaukee Journal Sentinel* reported. [6]

"This is a boom time for physicians," said Michael Matray, editor of the *Medical Liability Monitor*, which follows the medical malpractice insurance industry. "And the [insurance] industry is making money."[7]

An unknown percentage of medical malpractice payments are made on behalf of institutions, not doctors, and are not reported to the NPDB. But total medical liability insurance costs, which are the chief subject of concern among those pushing for caps of court awards, are falling nationally. Combined liability premiums paid by physicians and medical institutions fell from $10 billion in 2012 to $9.8 billion in 2013, according to data provided to Public Citizen by A.M. Best. Cumulative payments for liability insurance premiums were 16.4 percent lower in 2013 than in 2005.[8]

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[3] Jeffrey Bendix, *Competition Driving Malpractice Premiums Down*, MEDICAL ECONOMICS (Nov. 25, 2013).
[4] Saurabh Nair, *Competition Driving Medical Malpractice Rates Lower*, SNL INSURANCE DAILY (March 4, 2014).
[5] Saurabh Nair, *Competition Driving Medical Malpractice Rates Lower*, SNL INSURANCE DAILY (March 4, 2014
[6] Cary Spivak, *Malpractice Insurance Business Is Booming; Huge Profits Are a Change From Previous Decades*, MILWAUKEE JOURNAL SENTINEL (June 30, 2014).
[7] *Id*.
[8] Medical Liability, Direct Premiums Written, Calculated by A.M. Best, provided to Public Citizen on July 28, 2014.

The overall decline in medical malpractice payments over the past decade does not, however, mean that medical care has become safer.

Estimates on the number of avoidable errors have tended to grow even more alarming since 1999, when the prestigious Institute of Medicine (IOM) shocked the nation by reporting that between 44,000 and 98,000 patients were dying every year because of avoidable medical errors.[9] For example:

- The inspector general for the Department of Health and Human Services (HHS) in 2010 reached conclusions indicating that, if extrapolated nationally, nearly 80,000 patients in the Medicare program alone were annually suffering preventable adverse events that contributed to their deaths.[10]

- A 2010 study of patients treated in North Carolina hospitals found that nearly one-in-five patients suffered adverse events, of which more than 60 percent were avoidable and 2.4 percent caused or contributed to a patient's death.[11]

- An April 2011 study published in *Health Affairs* concluded that errors or adverse events occur in nearly one-in-three hospital admissions.[12]

- A study published in the *Journal of Patient Safety* in September 2013 used data from the three studies referenced above and an additional study published in 2008 by the HHS inspector general to conclude that "the true number of premature deaths associated with preventable harm to patients was estimated at more than 400,000 per year. Serious harm seems to be 10- to 20-fold more common than lethal harm."[13]

In part because of that study, the Subcommittee on Primary Health and Aging of the U.S. Senate Health, Education Labor and Pensions (HELP) Committee in July 2014 invited experts to testify at a hearing on the need improve patient safety.

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[9] TO ERR IS HUMAN: BUILDING A SAFER HEALTH CARE SYSTEM, INSTITUTE OF MEDICINE (1999), http://bit.ly/jfQLrX.

[10] ADVERSE EVENTS IN HOSPITALS: NATIONAL INCIDENCE AMONG MEDICARE BENEFICIARIES, HEALTH AND HUMAN SERVICES OFFICE OF INSPECTOR GENERAL (November 2010), http://1.usa.gov/1uujA3s.

[11] Christopher P. Landrigan *et al.*, *Temporal Trends in Rates of Patient Harm Resulting from Medical Care*, 363 NEW ENGLAND JOURNAL OF MEDICINE 2134 (2010), http://bit.ly/dQnfpf.

[12] David C. Classen et al., *Global Trigger Tool Shows that Adverse Events In Hospitals May Be Ten Times Greater than Previously Measured*, 30 HEALTH AFFAIRS 581 (2011), http://bit.ly/eGgg0G and Chris Flemming, *Sebelius and Berwick Highlight HA Study at Patient Safety Initiative Launch*, HEALTH AFFAIRS BLOG (April 12, 2011), http://bit.ly/eaNDeq.

[13] John T. James, *A New, Evidence-based Estimate of Patient Harms Associated with Hospital Care*, 9 JOURNAL OF PATIENT SAFETY 122 (2013), http://bit.ly/1tJhnqB.

When the IOM estimate was issued in 1999, "it was so staggeringly large, most people wondered 'could it possibly be right?' " Harvard School of Public Health Ashish Jha testified at the hearing. But "the evidence is very clear that the IOM probably got it wrong. It was clearly an underestimate of the toll of human suffering that goes on from preventable medical errors."[14]

Despite rhetoric about "frivolous lawsuits," the vast majority of medical malpractice payments compensate for injuries that no one would deem frivolous. Of the 9,677 medical malpractice payments on behalf of doctors in 2013, more than three-fifths (62 percent) compensated for negligence that resulted in a significant permanent injury, major permanent injury, quadriplegia, brain damage, the need for lifelong care, or death.

No medical malpractice payments could adequately compensate for these harms. But even if they could, the percentage of patients who receive payments is only a tiny fraction of those suffering avoidable injuries. This conclusion is evidenced by comparing the number of payments (fewer than 10,000 made on behalf of doctors in 2013) with the number whom experts say suffer avoidable injuries (as high as 8 million, according to the *Journal of Patient Safety* study cited above).

The thrust of this conclusion is borne out by researchers' findings. For instance, the Harvard School of Health's Michelle M. Mello and her co-authors wrote in a 2007 analysis of existing literature that only "2 to 3 percent of patients injured by negligence file malpractice claims and, of these, only about half recover compensation through the litigation process."[15]

In his Senate testimony, Jha asked "How do we begin to make real progress" of the sort that has eluded the medical profession in the 15 years since the IOM report was published?[16] Jha offered three suggestions, including expanding efforts of the Centers for Disease Control and Prevention to develop best practices to address areas of frequent adverse events, using electronic health records more effectively, and improving financial incentives for safety.

These strategies might be very effective, but more needs to be done. An essential first step would be for the AMA and other leaders to commit the same level of energy to eradicating

[14] Testimony of Ashish Jha, U.S. Senate Health, Education Labor and Pensions (HELP) Committee, Subcommittee on Primary Health and Aging (July 17, 2014).
[15] Michelle M. Mello, et al., *Who Pays for Medical Errors? An Analysis of Adverse Event Costs, the Medical Liability System, and Incentives for Patient Safety Improvement*, 4 JOURNAL OF EMPIRICAL LEGAL STUDIES, 835, 838 (2007), http://bit.ly/LD9TLt.
[16] Testimony of Ashish Jha, U.S. Senate Health, Education Labor and Pensions (HELP) Committee, Subcommittee on Primary Health and Aging (July 17, 2014).

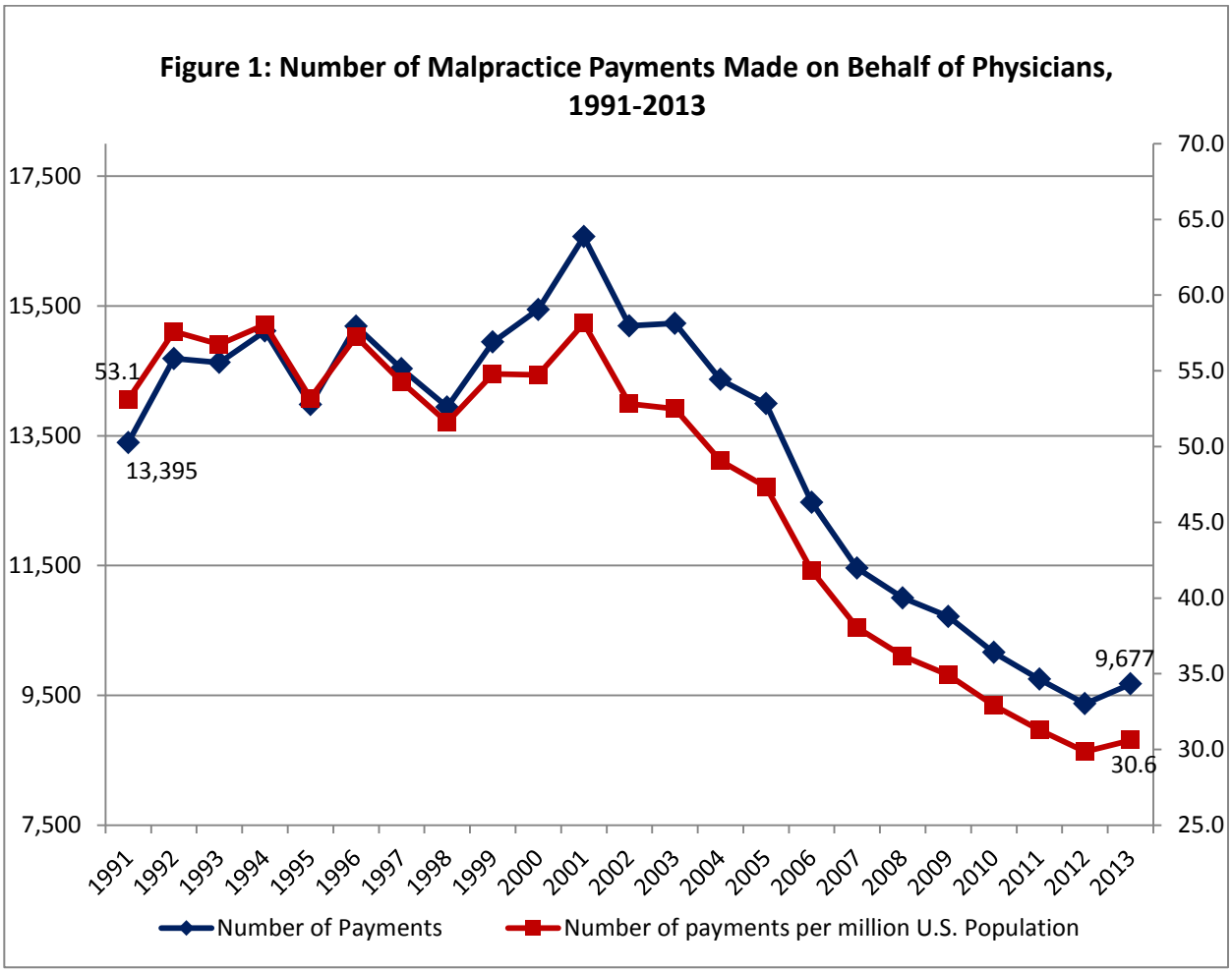
avoidable adverse events in hospitals as they have in pursuit of laws to limit doctors' liability for those adverse events. In other words, the AMA and other peer groups should demonstrate that they are as concerned about the 98 to 99 percent of adverse events that do not result in liability payments as they are about the payments that do result from 1 to 2 percent of adverse events.

Appendix

Table 1: Number of Medical Malpractice Payments Made on Behalf of Physicians, 1991-2013

Year	Number of Payments	Number of Payments per 1 Million People (U.S. Population)
1991	13,395	53.1
1992	14,689	57.6
1993	14,629	56.7
1994	15,112	58.1
1995	13,978	53.2
1996	15,188	57.3
1997	14,531	54.3
1998	13,943	51.6
1999	14,942	54.8
2000	15,445	54.7
2001	16,565	58.1
2002	15,193	52.8
2003	15,230	52.5
2004	14,367	49.1
2005	13,992	47.3
2006	12,475	41.8
2007	11,459	38.0
2008	11,001	36.2
2009	10,715	34.9
2010	10,160	32.9
2011	9,749	31.3
2012	9,370	29.9
2013	9,677	30.6

Sources: National Practitioner Data Bank and U.S. Census Bureau

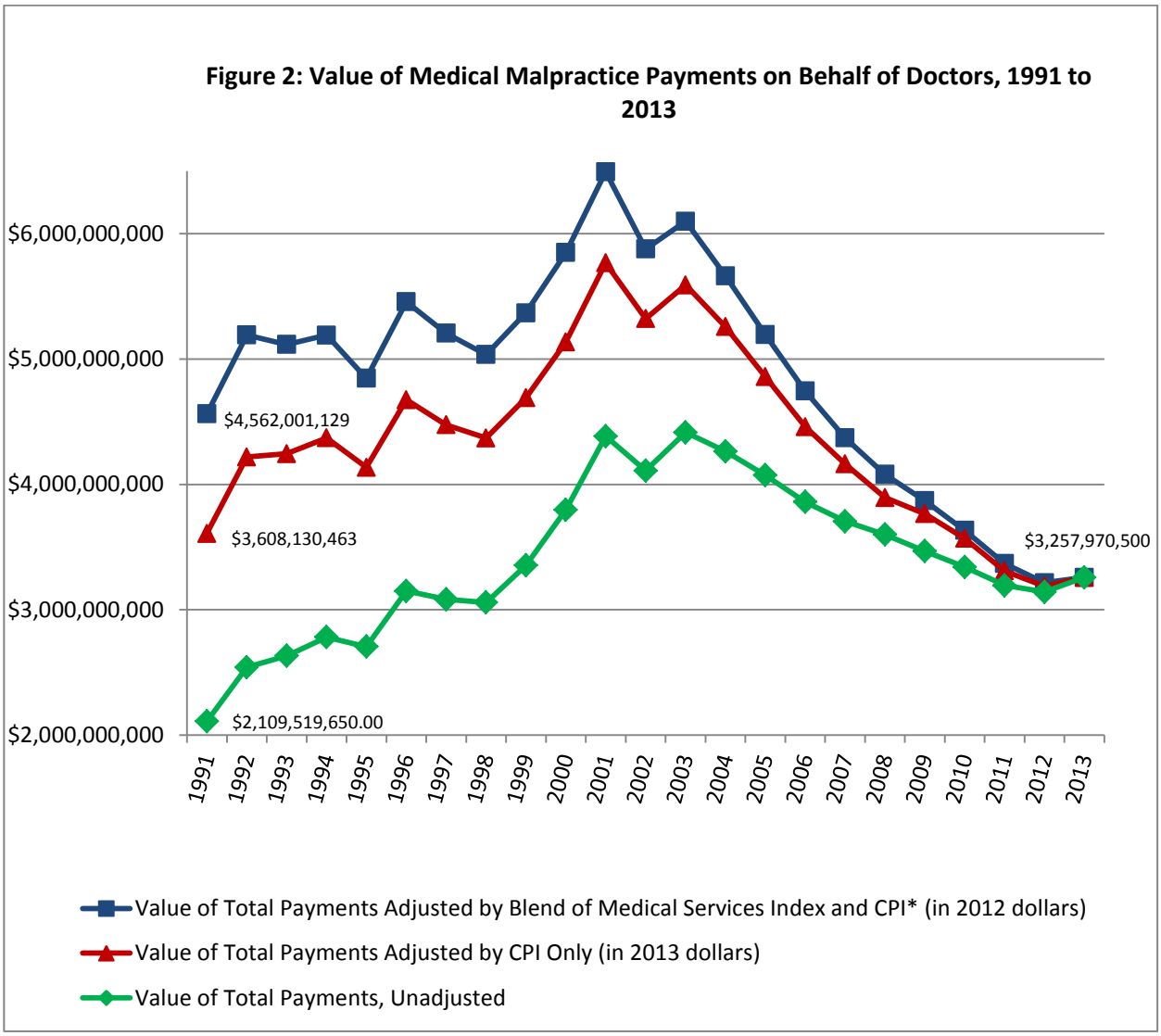


Sources: National Practitioner Data Bank; Bureau of Labor Statistics Consumer Price Index, (All Urban Consumers, Current Series) and Medical Services Inflation Index (All Urban Consumers, Current Series).

Table 2: Value of Medical Malpractice Payments on Behalf of Doctors, 1991-2013

Year	Value of Total Payments Adjusted by Blend of Medical Services Index and CPI* (in 2013 dollars)	Value of Total Payments Adjusted by CPI Only (in 2013 dollars)	Value of Total Payments, Unadjusted
1991	$4,562,001,129	$3,608,130,463	$2,109,519,650
1992	$5,191,625,161	$4,218,361,114	$2,540,537,800
1993	$5,116,632,860	$4,244,014,979	$2,632,503,700
1994	$5,190,098,428	$4,371,250,498	$2,780,853,650
1995	$4,846,675,664	$4,134,961,605	$2,705,083,550
1996	$5,456,687,786	$4,674,431,645	$3,148,299,150
1997	$5,205,890,617	$4,474,879,141	$3,083,050,100
1998	$5,035,102,189	$4,370,029,144	$3,057,709,150
1999	$5,368,028,474	$4,689,994,707	$3,354,065,850
2000	$5,849,152,000	$5,136,811,903	$3,797,091,350
2001	$6,494,602,271	$5,767,198,195	$4,384,374,800
2002	$5,877,854,064	$5,322,135,493	$4,109,995,300
2003	$6,099,200,615	$5,589,973,818	$4,415,214,750
2004	$5,664,038,809	$5,257,756,802	$4,263,405,950
2005	$5,194,371,830	$4,858,499,006	$4,073,133,050
2006	$4,744,650,617	$4,459,517,055	$3,859,247,150
2007	$4,370,613,440	$4,162,805,147	$3,705,080,100
2008	$4,080,020,108	$3,894,194,800	$3,599,084,050
2009	$3,869,274,663	$3,764,764,699	$3,467,083,300
2010	$3,632,154,090	$3,568,866,337	$3,340,585,250
2011	$3,368,301,830	$3,308,024,042	$3,194,167,250
2012	$3,215,588,705	$3,188,297,004	$3,142,270,300
2013	$3,257,970,500	$3,257,970,500	$3,257,970,500

Sources: National Practitioner Data Bank; Bureau of Labor Statistics Consumer Price Index, (All Urban Consumers, Current Series) and Medical Services Inflation Index (All Urban Consumers, Current Series).
* Weighted 53% medical services index, 47% consumer price index

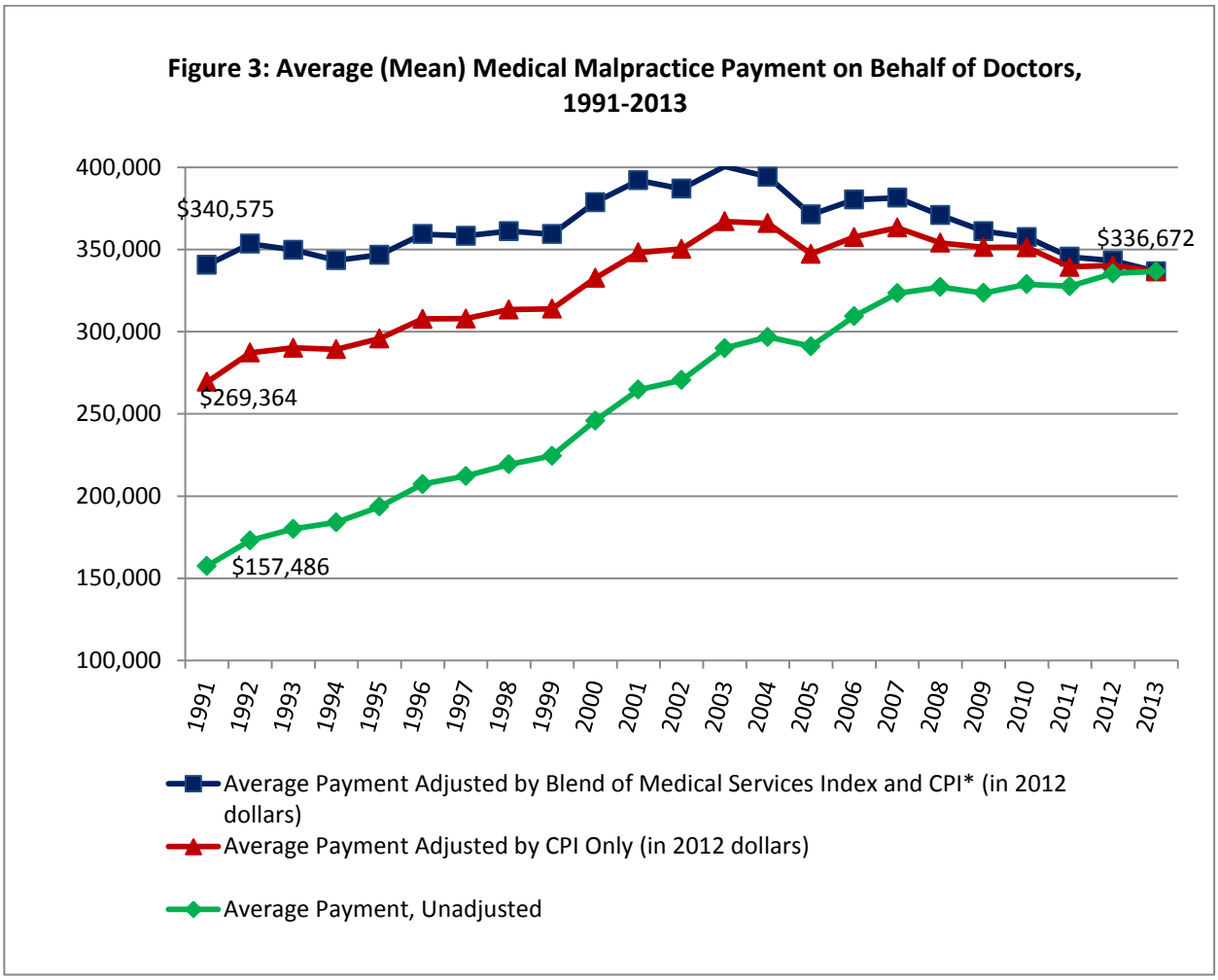


Sources: National Practitioner Data Bank; Bureau of Labor Statistics Consumer Price Index, (All Urban Consumers, Current Series) and Medical Services Inflation Index (All Urban Consumers, Current Series). * Weighted 53% medical services index, 47% consumer price index

Table 3: Average (Mean) Medical Malpractice Payment on Behalf of Doctors, 1991-2013

Year	Mean Payment Adjusted by Blend of Medical Services Index and CPI* (in 2013 dollars)	Mean Payment Adjusted by CPI Only (in 2013 dollars)	Average Payment, Unadjusted
1991	$340,575	$269,364	$157,486
1992	$353,436	$287,178	$172,955
1993	$349,760	$290,110	$179,951
1994	$343,442	$289,257	$184,016
1995	$346,736	$295,819	$193,524
1996	$359,276	$307,771	$207,289
1997	$358,261	$307,954	$212,171
1998	$361,120	$313,421	$219,301
1999	$359,258	$313,880	$224,472
2000	$378,708	$332,587	$245,846
2001	$392,068	$348,156	$264,677
2002	$386,879	$350,302	$270,519
2003	$400,473	$367,037	$289,902
2004	$394,239	$365,961	$296,750
2005	$371,239	$347,234	$291,104
2006	$380,333	$357,476	$309,358
2007	$381,413	$363,278	$323,334
2008	$370,877	$353,986	$327,160
2009	$361,108	$351,355	$323,573
2010	$357,495	$351,266	$328,798
2011	$345,502	$339,319	$327,641
2012	$343,179	$340,266	$335,354
2013	$336,672	$336,672	$336,672

Sources: National Practitioner Data Bank and Bureau of Labor Statistics Consumer Price Index, (All Urban Consumers, Current Series) and Medical Services Inflation Index (All Urban Consumers, Current Series).
* Weighted 53% medical services index, 47% consumer price index



Sources: National Practitioner Data Bank and Bureau of Labor Statistics Consumer Price Index, (All Urban Consumers, Current Series) and Medical Services Inflation Index (All Urban Consumers, Current Series).
* Weighted 53% medical services index, 47% consumer price index

Table 4: Medical Liability Costs and Malpractice Payments as Percentage of Total Health Care Spending

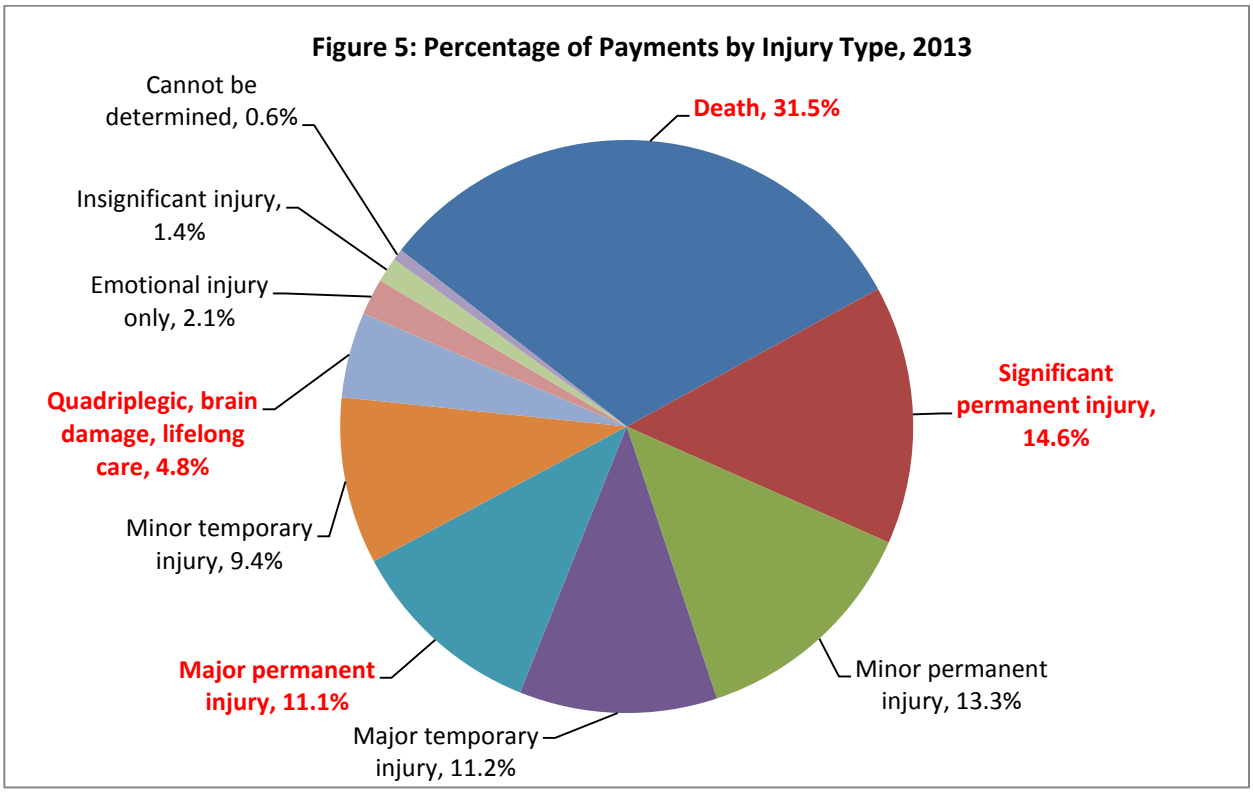
Year	Total National Health Care Costs (in billions of actual dollars)	Sum of Premiums Written for Doctors' and Hospitals' Liability Insurance (in billions of actual dollars)	Value of Malpractice Payments Made on Behalf of Doctors (in billions of actual dollars)	Medical Liability Premiums as a Percentage of Overall Health Care Costs	Medical Malpractice Payments as a Percentage of Overall Health Care Costs	Total Medical Malpractice Payments
1991	$739.48	n/a	$2.11	n/a	0.29%	$2,109,519,650
1992	$801.03	n/a	$2.54	n/a	0.32%	$2,540,537,800
1993	$860.32	n/a	$2.63	n/a	0.31%	$2,632,503,700
1994	$908.77	n/a	$2.78	n/a	0.31%	$2,780,853,650
1995	$961.60	n/a	$2.71	n/a	0.28%	$2,705,083,550
1996	$1,014.12	n/a	$3.15	n/a	0.31%	$3,148,299,150
1997	$1,070.45	n/a	$3.08	n/a	0.29%	$3,083,050,100
1998	$1,129.61	n/a	$3.06	n/a	0.27%	$3,057,709,150
1999	$1,201.12	n/a	$3.35	n/a	0.28%	$3,354,065,850
2000	$1,377.20	n/a	$3.80	n/a	0.28%	$3,797,091,350
2001	$1,493.30	n/a	$4.38	n/a	0.29%	$4,384,374,800
2002	$1,638.00	n/a	$4.11	n/a	0.25%	$4,110,490,300
2003	$1,776.00	$11.02	$4.42	0.62%	0.25%	$4,415,214,750
2004	$1,905.70	$11.71	$4.26	0.61%	0.22%	$4,263,405,950
2005	$2,035.40	$11.86	$4.07	0.58%	0.20%	$4,073,133,050
2006	$2,166.70	$12.21	$3.86	0.56%	0.18%	$3,859,462,150
2007	$2,302.90	$11.55	$3.71	0.50%	0.16%	$3,706,630,100
2008	$2,411.70	$11.19	$3.60	0.46%	0.15%	$3,599,084,050
2009	$2,504.20	$10.78	$3.47	0.43%	0.14%	$3,468,090,800
2010	$2,599.00	$10.59	$3.34	0.41%	0.13%	$3,340,095,250
2011	$2,692.80	$10.31	$3.19	0.38%	0.12%	$3,194,292,250
2012	$2,793.40	$10.04	$3.14	0.36%	0.11%	$3,143,151,800
2013	$2,915.00	$9.79	$3.26	0.34%	0.11%	$3,257,970,500

Sources: National Practitioner Data Bank Bureau of Labor Statistics Consumer Price Index, (All Urban Consumers, Current Series) and Medical Services Inflation Index (All Urban Consumers, Current Series), and A.M. Best.

Table 5: Number of Medical Malpractice Payments by Injury Type, 2013

Injury Type	Count of Payment	Percentage
Death	3,046	31.5%
Significant permanent injury	1413	14.6%
Minor permanent injury	1284	13.3%
Major temporary injury	1,081	11.2%
Major permanent injury	1078	11.1%
Minor temporary injury	911	9.4%
Quadriplegic, brain damage, lifelong care	467	4.8%
Emotional injury only	199	2.1%
Insignificant injury	136	1.4%
Cannot be determined	62	0.6%

Source: National Practitioner Data Bank

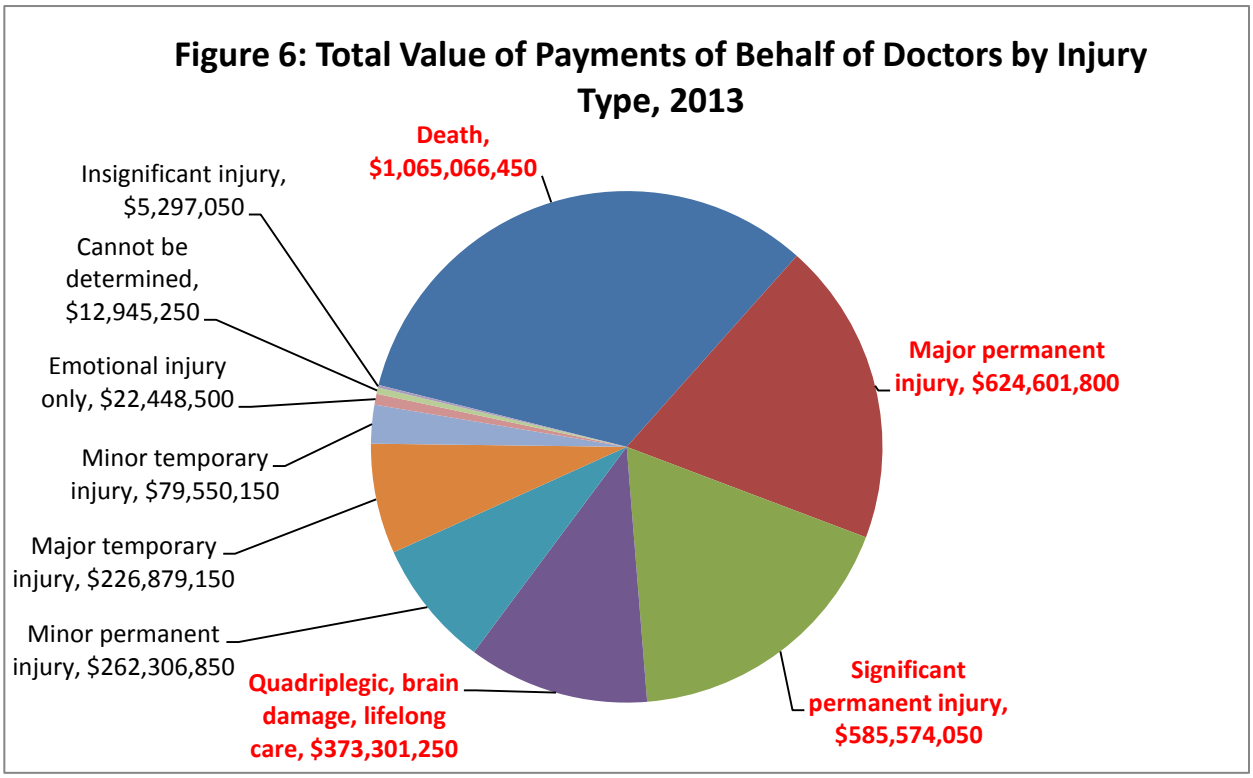


Source: National Practitioner Data Bank

Table 6: Value of Medical Malpractice Payments by Injury Type, 2013

Injury Type	Cumulative Amount of Payments	Percentage
Death	$1,065,066,450	32.7%
Major permanent injury	$624,601,800	19.2%
Significant permanent injury	$585,574,050	18.0%
Quadriplegic, brain damage, lifelong care	$373,301,250	11.5%
Minor permanent injury	$262,306,850	8.1%
Major temporary injury	$226,879,150	7.0%
Minor temporary injury	$79,550,150	2.4%
Emotional injury only	$22,448,500	0.7%
Cannot be determined	$12,945,250	0.4%
Insignificant injury	$5,297,050	0.2%

Source: National Practitioner Data Bank



Source: National Practitioner Data Bank