



Medical Malpractice Payments Declined Again in 2010

**Both Frequency and Value Fell To Lowest
Levels on Record By Most Measures**

May 2011

Acknowledgments

This report was written by Taylor Lincoln, research director of Public Citizen's Congress Watch division.

About Public Citizen

Public Citizen is a national non-profit organization with more than 225,000 members and supporters. We represent consumer interests through lobbying, litigation, administrative advocacy, research, and public education on a broad range of issues including consumer rights in the marketplace, product safety, financial regulation, safe and affordable health care, campaign finance reform and government ethics, fair trade, climate change, and corporate and government accountability.



Public Citizen's Congress Watch
215 Pennsylvania Ave. S.E.
Washington, D.C. 20003
P: 202-546-4996
F: 202-547-7392
<http://www.citizen.org>

By almost any measure, the prevalence and cost of medical malpractice litigation were at their lowest levels on record in 2010, according to data released earlier this month by the federal government's National Practitioner Data Bank (NPDB) and analyzed by Public Citizen.

- **The Number of Malpractice Payments on Behalf of Doctors in 2010 Was the Lowest on Record.** The number of medical malpractice payments made on behalf of physicians fell for the seventh consecutive year in 2010, plummeting to the lowest total in the history of the NPDB, which has tracked medical malpractice payments since 1990.¹
- **The Inflation-Adjusted Value of Payments Made on Behalf of Doctors in 2010 Was the Lowest on Record.** The cumulative value of malpractice payments in 2010 was the lowest in the history of the NPDB if adjusted for inflation by the consumer price index (CPI) or medical services index. In actual dollars, payments in 2010 were the lowest since 1998.
- **Litigation Trends Fail to Explain Rising Health Care Costs.** Some in Congress have blamed litigation for the nation's skyrocketing health care costs. This claim has never been credible. The recently released NPDB data and data on liability insurance premiums further discredit that argument:
 - **Between 2000 and 2010, Health Care Spending Rose 90 Percent While Medical Malpractice Payments Fell 11.9 Percent.** (Both figures in unadjusted dollars.)
 - **Malpractice Payments to Victims in 2010 Amounted to Just 0.13 of 1 Percent of National Health Costs, the Lowest Percentage on Record.**
 - **Total Costs for Medical Malpractice Litigation, as Measured By Liability Insurance Premiums Paid By Doctors and Hospitals, Fell in 2009 to Just 0.40 of 1 Percent of Health Care Costs, the Lowest Level Since NPDB Data Collection Began.** (Note: This comparison assesses 2009 data because 2010 liability insurance data are not yet available.) Moreover, the sum of liability insurance payments encompasses not just litigation defense costs and payments to victims, but also liability insurers' profits and administrative costs.

¹ The NPDB began tracking the data in the fourth quarter of 1990. The first full year of data covered 1991.

- **The Overwhelming Majority of Medical Malpractice Awards Compensate for Death, Catastrophic Harms or Serious Permanent Injuries.** Despite claims by those seeking to reduce patients' legal rights that medical malpractice lawsuits are largely "frivolous," the vast majority of payments are for extremely serious harms. More than four-fifths (82.1 percent) of the money paid for malpractice negligence in 2010 compensated victims or their surviving family members for harms defined by NPDB as significant permanent injuries, major permanent injuries, quadriplegia, brain damage, injuries requiring lifelong care, or death.
- **Multiple Landmark Studies Indicate That the Precipitous Decline in Litigation Has Not Been Accompanied by a Reduction in Medical Errors.** For years, observers of health care safety issues referred to the 1998 Institute of Medicine report, "To Err Is Human," for guidance on the prevalence of medical errors. That study concluded that 44,000 and 98,000 patients were dying every year because of avoidable medical errors.²

In 2010 and in early 2011, three major studies reporting similar or worse findings about the prevalence of medical errors were published:

- The inspector general for the Department of Health and Human Services (HHS) in November 2010 published a study which concluded that one in seven Medicare patients in hospital care experienced a serious adverse event, that these adverse events contributed to the deaths of 1.5 percent of Medicare patients, and that 44 percent of the adverse events were preventable. These findings translate to more than 700,000 Medicare patients experiencing a serious, preventable, adverse event every year, including nearly 80,000 Medicare patients suffering preventable adverse events that contribute to their deaths.³

² "To Err Is Human: Building a Safer Health Care System," Institute of Medicine, 1999. Available at http://books.nap.edu/openbook.php?record_id=9728&page=R1.

³ "Adverse Events In Hospitals: National Incidence Among Medicare Beneficiaries," Health and Human Services Office of Inspector General," November 2010.

- A 2010 study of patients treated in North Carolina hospitals found that 18 percent suffered adverse events and that 63 percent of these harms were avoidable. Of the adverse events, 2.4 percent caused or contributed to a patient's death.⁴
- An April 2011 study published in *Health Affairs* concluded that errors or adverse events occur in nearly one out of three hospital admissions. Centers for Medicare and Medicaid Services (CMS) Administrator Don Berwick said the *Health Affairs* study "raised the stakes by finding ... that the number of adverse events could be ten times greater than we originally thought."⁵

In contrast to the hundreds of thousands of annual adverse events (and tens or hundreds of thousands of deaths) that the 1998 Institute of Medicine study and more recent studies attribute to medical mistakes, only 10,195 medical malpractice payments were made on behalf of doctors in 2010. To put this in perspective, the number of payments made in 2010 equaled only a little more than 1 percent of the number of Medicare patients that the Department of Health and Human Services estimates suffered serious, avoidable injuries that year—and that says nothing of the hundreds of thousands or millions of non-Medicare patients who suffered serious harms due to negligence.

This contrast points to the inescapable conclusion that there is a medical malpractice crisis in the United States, and the crisis is over the epidemic of medical errors, not over the relatively rare compensatory payments.

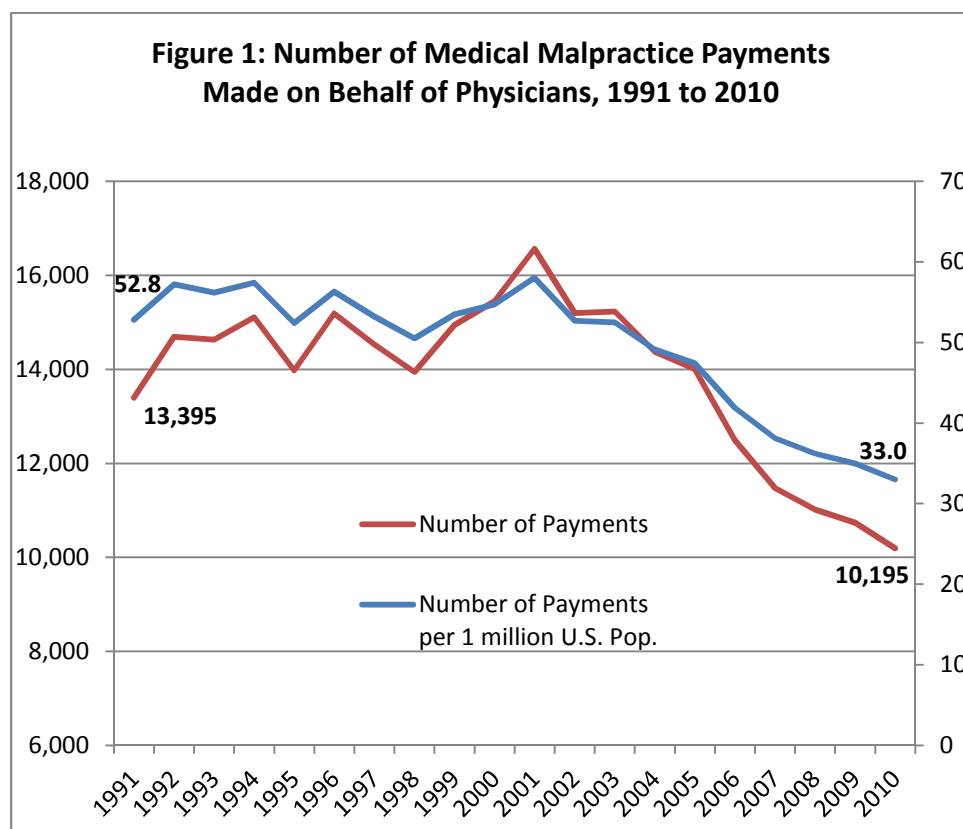
⁴ Christopher P. Landrigan *et al.*, "Temporal Trends in Rates of Patient Harm Resulting from Medical Care," *New England Journal of Medicine*, Nov. 25, 2010.

⁵ Chris Flemming, "Sebelius And Berwick Highlight HA Study At Patient Safety Initiative Launch," Health Affairs blog, April 12, 2011.

Data Analysis

Number of Medical Malpractice Payments Fell to Lowest Level on Record in 2010

The number of malpractice payments made on behalf of doctors fell 5 percent from 2009 to 2010, marking the seventh straight year that the number of payments has fallen. Payments in 2010 were 19.6 percent fewer than in 1991, the earliest full year for which the NPDB collected data. Compared to the U.S. population, the number of payments was 37.5 percent lower in 2010 than in 1991. [See Figure 1; Data for Figure 1 are in the Appendix]

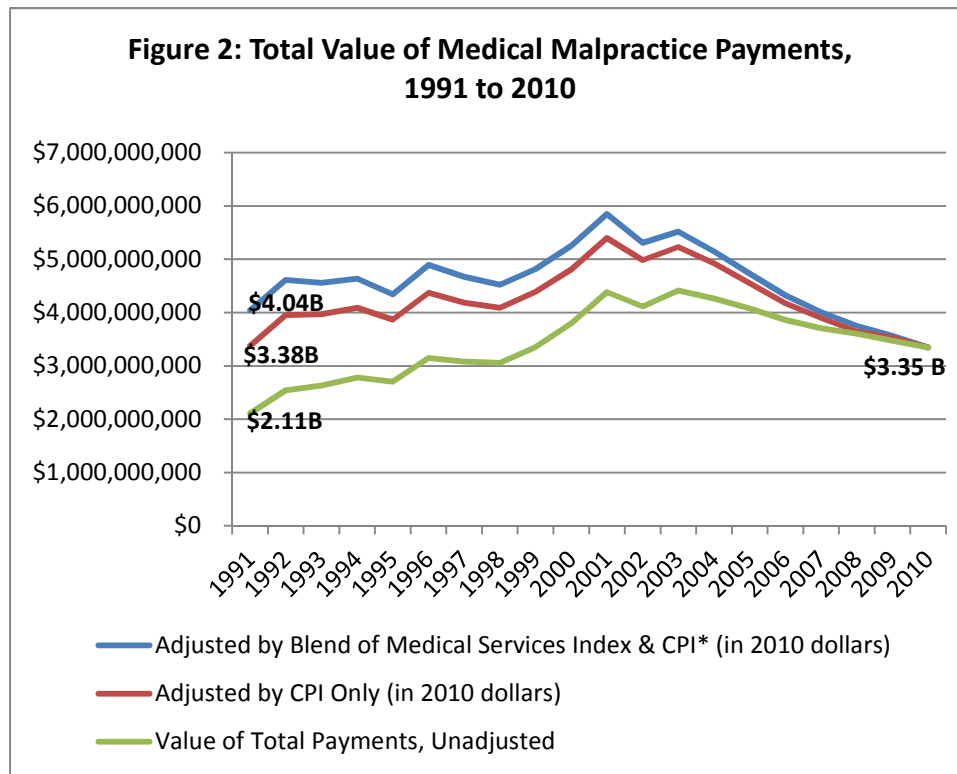


Source: National Practitioner Data Bank and U.S. Census.

Inflation-Adjusted Value of Medical Malpractice Payments Was the Lowest on Record in 2010

The amount of money paid out for medical malpractice in 2010 was the lowest on record, if adjusted for inflation by the consumer price index (CPI) or the medical services index. In actual, unadjusted dollars, payments in 2010 were the lowest since 1998. We have created a blended inflation index between the consumer price index and medical services index

because about half of medical malpractice payments compensate for future medical costs.⁶ [See Figure 2; Data for Figure 2 are in the Appendix]

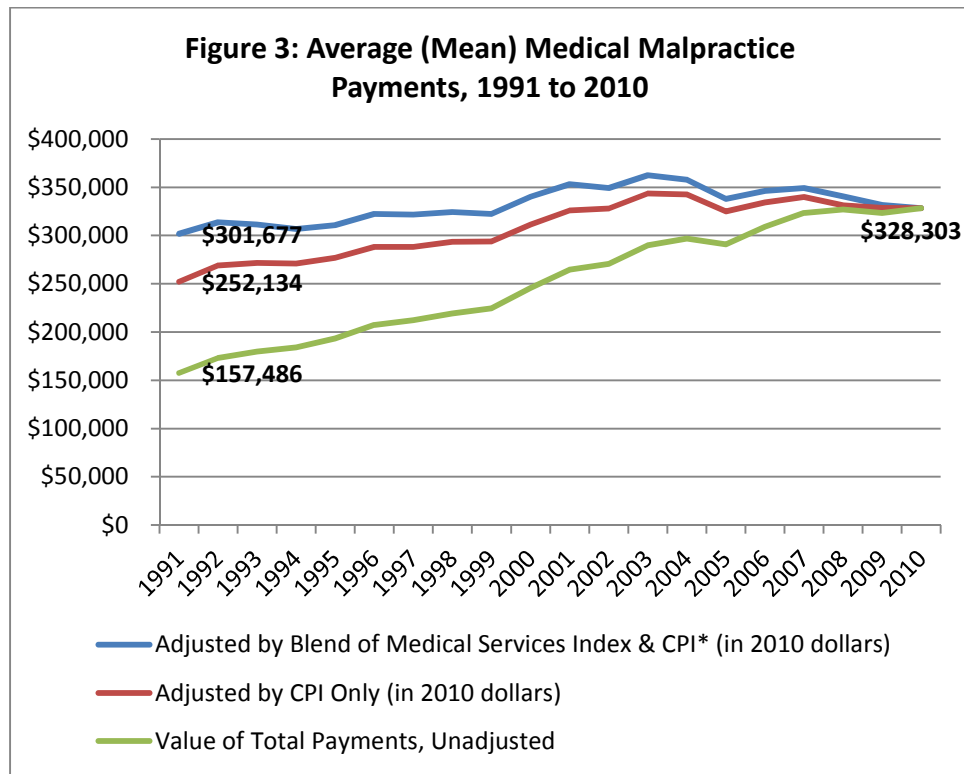


Sources: National Practitioner Data Bank; Bureau of Labor Statistics Consumer Price Index, (All Urban Consumers, Current Series) and Medical Services Inflation Index (All Urban Consumers, Current Series). * Weighted 53% medical services index, 47% consumer price index.

Inflation-Adjusted Average Value of Medical Malpractice Payments Fell in 2010

Mean (average) payments to malpractice victims decreased by a fraction of a percentage point if adjusted by the consumer price index and decreased by 1 percent if adjusted by the blended consumer price index/medical services index. In unadjusted dollars, mean payments were 1.6 percent higher in 2010 than in 2009. Mean payments represent the one index of medical malpractice litigation that has generally increased over the life of the National Practitioner Data Bank. This likely is due to an increase in the proportion of cases regarding particularly severe harms in an era in which the overall number of cases has decreased. In other words, as legal developments in many states have made it far more difficult to pursue malpractice claims, it is likely that only the most patently meritorious cases involving the greatest harms, remain. [See Figure 3; Data for Figure 3 are in the Appendix]

⁶ See, e.g., David M. Studdert, *et al*, "Beyond Dead Reckoning," *Indiana Law Review*, Vol. 33, No. 4, p. 1684. The authors concluded from a landmark patient safety study in Colorado and Utah that 53 percent of medical malpractice payments compensated for future health care costs.



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.

Litigation's Share of Total Health Care Costs Declined to Infinitesimal Levels

Total litigation costs—broadly measured by liability insurance premiums paid by doctors and hospitals—were at record lows in relation to total health care costs in 2009 (the most recent year for which premium data are available).

Total U.S. medical professional liability premiums in 2009 were \$9.84 billion, or just 0.40 of 1 percent of the national health care costs that year.⁷ Liability premiums encompass not just litigation defense costs and payments to victims, but also liability insurers' profits and administrative costs.

Although total liability insurance premiums declined from 2007 to 2009, reductions in premiums have not matched reductions in litigation payments. Payments made on behalf of doctors in 2009 for medical malpractice negligence were 8.7 percent lower in unadjusted dollars than in 2000. Liability insurance premiums for doctors were 56.2 percent higher in 2009 than in 2000. Nonetheless, premiums' share of overall health costs in 2009 was lower than in any year since NPDB began collecting data on medical malpractice payments.

⁷ A.M. Best & Co, cited in Americans for Insurance Reform, "True Risk," July 22, 2009 (available at <http://insurance-reform.org/TrueRiskF.pdf>).

Trends suggest that premiums' share of costs will fall still further when full 2010 data is released. [See Figure 4]

Figure 4: Medical Liability Costs and Medical Malpractice Costs as Percentage of Total Health Care Spending, 1991-2010

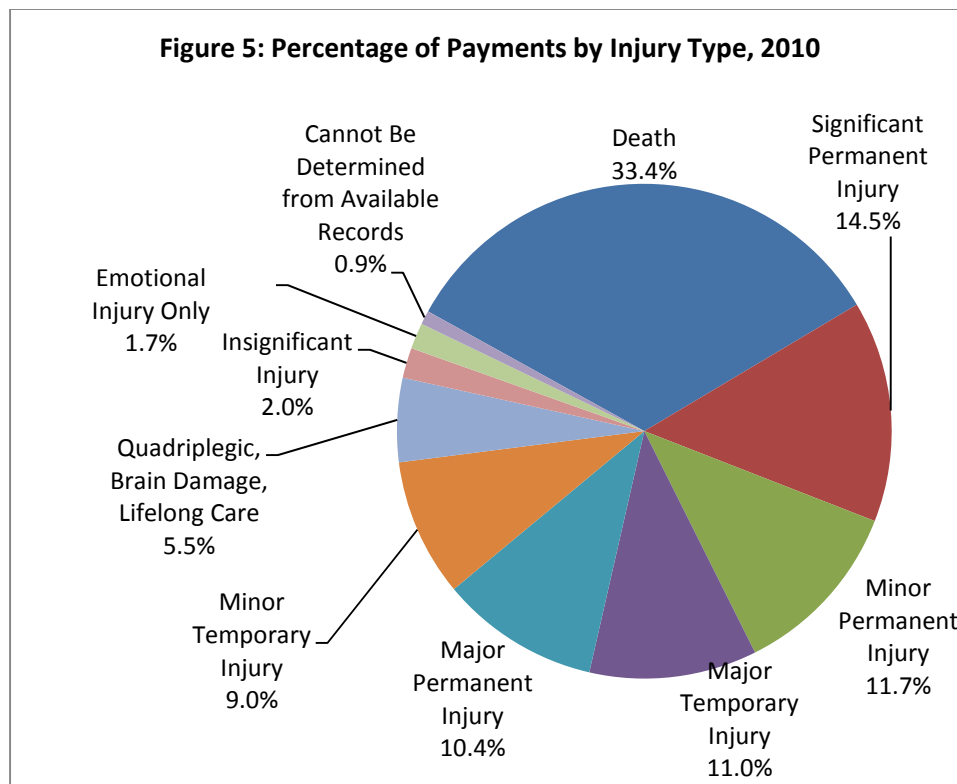
Year	Total National Health Care Costs (in billions of actual dollars)	Sum of Premiums Written for Doctors' and Hospitals' Liability Insurance (in billions of actual dollars)	Value of Malpractice Payments Made on Behalf of Doctors (in billions of actual dollars)	Medical Liability Premiums as a Percentage of Overall Health Care Costs	Medical Malpractice Payments as a Percentage of Overall Health Care Costs
1991	\$781.59	\$5.04	\$2.11	0.65%	0.27%
1992	\$849.07	\$5.23	\$2.54	0.62%	0.30%
1993	\$912.48	\$5.47	\$2.63	0.60%	0.29%
1994	\$962.13	\$5.95	\$2.78	0.62%	0.29%
1995	\$1,016.63	\$6.11	\$2.71	0.60%	0.27%
1996	\$1,068.48	\$6.00	\$3.15	0.56%	0.29%
1997	\$1,125.12	\$5.86	\$3.08	0.52%	0.27%
1998	\$1,189.99	\$6.04	\$3.06	0.51%	0.26%
1999	\$1,265.19	\$6.05	\$3.35	0.48%	0.27%
2000	\$1,352.86	\$6.30	\$3.80	0.47%	0.28%
2001	\$1,469.22	\$7.29	\$4.39	0.50%	0.30%
2002	\$1,602.39	\$8.93	\$4.11	0.56%	0.26%
2003	\$1,735.20	\$10.14	\$4.42	0.58%	0.25%
2004	\$1,855.39	\$11.50	\$4.27	0.62%	0.23%
2005	\$1,982.54	\$11.58	\$4.08	0.58%	0.21%
2006	\$2,112.54	\$11.88	\$3.86	0.56%	0.18%
2007	\$2,239.71	\$11.14	\$3.71	0.50%	0.17%
2008	\$2,338.75	\$10.69	\$3.60	0.46%	0.15%
2009	\$2,472.21	\$9.84	\$3.47	0.40%	0.14%
2010	\$2,570 (est.)	N/A	\$3.34	N/A	0.13%

Sources: National Practitioner Data Bank, A.M. Best & Co. and Centers for Medicare and Medicaid Studies.

Nearly Half of Dollars Paid In 2010 Compensated for Death, Quadriplegia, Brain Damage or Injuries Requiring Lifelong Care Resulting from Medical Negligence

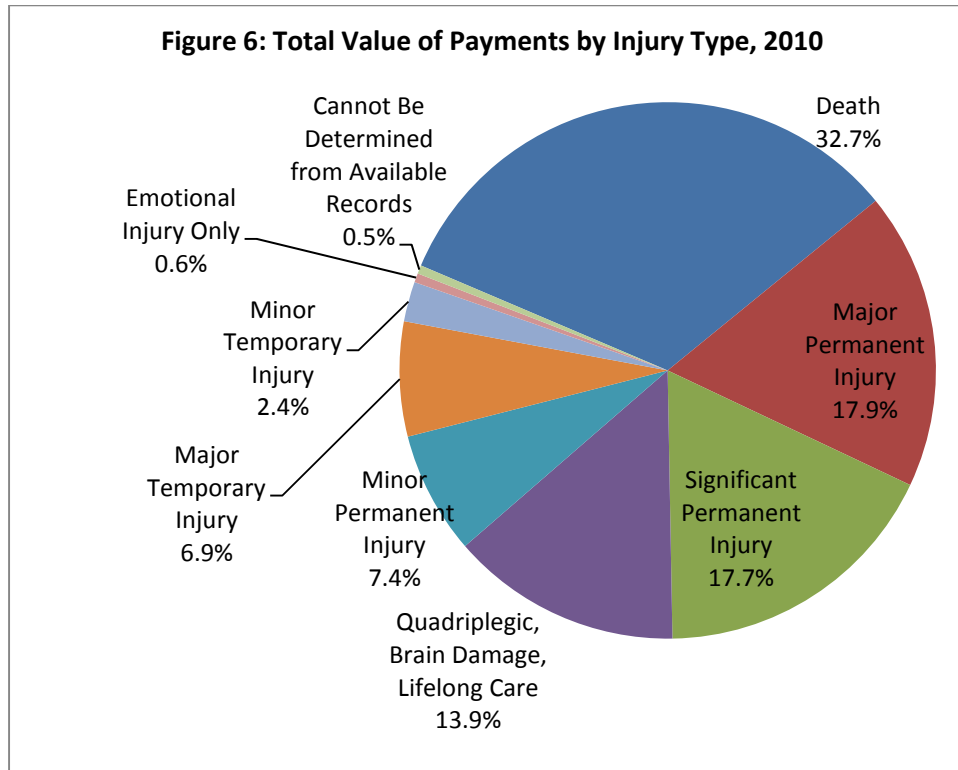
Despite rhetoric about “frivolous lawsuits,” the vast majority of medical malpractice payments compensate injuries that no one would deem frivolous.

Of the 10,772 medical malpractice payments in 2009, nearly two-thirds (64.5 percent) compensated for negligence that resulted in a significant permanent injury, major permanent injury, quadriplegia, brain damage, the need for lifelong care, or death. [See Figure 5; Detailed data for Figure 5 are in the Appendix]



Source: National Practitioner Data Bank.

More important, the dollar value of payments for these extremely serious outcomes accounted for an even higher proportion—more than four-fifths (82.1 percent) of the total value of malpractice payments last year. Nearly half the money paid (46.6 percent) compensated victims and victims’ survivors for negligence resulting in death, quadriplegia, brain damage or injuries requiring lifelong care. “Insignificant injury” and “emotional injury only” accounted for between 0.2 percent and 0.6 percent of dollars paid in 2010. [See Figure 6; Detailed data for Figure 6 are in the Appendix]



Source: National Practitioner Data Bank.

Appendix

Figure 1: Number of Medical Malpractice Payments Made on Behalf of Physicians, 1991-2010

Year	Number of Payments	Number of Payments per 1 Million People (U.S. Population)
1991	13,395	52.8
1992	14,691	57.2
1993	14,629	56.2
1994	15,111	57.4
1995	13,979	52.4
1996	15,188	56.3
1997	14,531	53.2
1998	13,943	50.5
1999	14,944	53.5
2000	15,445	54.7
2001	16,566	58.0
2002	15,195	52.7
2003	15,230	52.5
2004	14,373	49.1
2005	14,006	47.4
2006	12,491	41.9
2007	11,472	38.1
2008	11,014	36.2
2009	10,738	35.0
2010	10,195	33.0

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

Figure 2: Value of Medical Malpractice Payments, 1991-2010

Year	Value of Total Payments Adjusted by Blend of Medical Services Index & CPI* (in 2010 dollars)	Value of Total Payments Adjusted by CPI Only (in 2010 dollars)	Value of Total Payments, Unadjusted
1991	\$4,040,959,465	\$3,377,337,862	\$2,109,519,650
1992	\$4,610,266,154	\$3,951,233,858	\$2,542,274,050
1993	\$4,557,261,659	\$3,971,867,329	\$2,632,052,450
1994	\$4,636,326,647	\$4,091,641,554	\$2,780,851,150
1995	\$4,344,725,724	\$3,870,459,732	\$2,705,076,050
1996	\$4,896,421,967	\$4,375,186,836	\$3,148,121,650
1997	\$4,674,165,657	\$4,188,645,312	\$3,083,050,100
1998	\$4,522,675,904	\$4,090,502,003	\$3,057,709,150
1999	\$4,818,929,063	\$4,390,202,336	\$3,354,219,600
2000	\$5,257,243,155	\$4,808,248,893	\$3,797,100,100
2001	\$5,848,301,418	\$5,400,508,734	\$4,386,167,300
2002	\$5,306,007,610	\$4,983,555,701	\$4,111,520,300
2003	\$5,519,008,102	\$5,232,712,645	\$4,415,467,250
2004	\$5,144,295,078	\$4,922,211,275	\$4,264,068,450
2005	\$4,734,677,979	\$4,550,372,678	\$4,075,502,550
2006	\$4,325,799,542	\$4,174,937,546	\$3,859,868,150
2007	\$4,007,103,705	\$3,899,390,926	\$3,707,797,600
2008	\$3,750,882,551	\$3,647,513,376	\$3,601,462,800
2009	\$3,560,824,560	\$3,528,194,298	\$3,471,256,100
2010	\$3,347,045,500	\$3,347,045,500	\$3,347,045,500

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.

Figure 3: Average (Mean) Medical Malpractice Payment, 1991 to 2010

Year	Mean Payments Adjusted by Combination of Medical Services Index & CPI* (in 2010 dollars)	Mean Payments Adjusted by CPI Only (in 2010 dollars)	Mean Payments, Unadjusted
1991	\$301,677	\$252,134	\$157,486
1992	\$313,816	\$268,956	\$173,050
1993	\$311,522	\$271,506	\$179,920
1994	\$306,818	\$270,772	\$184,028
1995	\$310,804	\$276,877	\$193,510
1996	\$322,388	\$288,069	\$207,277
1997	\$321,669	\$288,256	\$212,171
1998	\$324,369	\$293,373	\$219,301
1999	\$322,466	\$293,777	\$224,453
2000	\$340,385	\$311,314	\$245,847
2001	\$353,030	\$326,000	\$264,769
2002	\$349,194	\$327,973	\$270,584
2003	\$362,377	\$343,579	\$289,919
2004	\$357,914	\$342,462	\$296,672
2005	\$338,046	\$324,887	\$290,983
2006	\$346,313	\$334,236	\$309,012
2007	\$349,294	\$339,905	\$323,204
2008	\$340,556	\$331,171	\$326,990
2009	\$331,610	\$328,571	\$323,268
2010	\$328,303	\$328,303	\$328,303

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.

Figure 4: Medical Liability Costs and Medical Malpractice Costs as Percentage of Total Health Care Spending, 1991-2010

[Figures are included in Data Analysis Section, above]

Figure 5: Percentage of Payments by Injury Type, 2010

Injury Type	Frequency	Percentage
Death	3,404	33.4%
Significant Permanent Injury	1,475	14.5%
Minor Permanent Injury	1,192	11.7%
Major Temporary Injury	1,117	11.0%
Major Permanent Injury	1,062	10.4%
Minor Temporary Injury	919	9.0%
Quadriplegic, Brain Damage, Lifelong Care	558	5.5%
Insignificant Injury	201	2.0%
Emotional Injury Only	175	1.7%
Cannot Be Determined from Available Records	92	0.9%

Source: National Practitioner Data Bank.

Figure 6: Total Value of Payments by Injury Type, 2010

Injury Type	Sum of Payments	Percentage
Death	\$1,091,164,350	32.7%
Major Permanent Injury	\$597,978,100	17.9%
Significant Permanent Injury	\$592,687,150	17.7%
Quadriplegic, Brain Damage, Lifelong Care	\$464,366,500	13.9%
Minor Permanent Injury	\$248,643,250	7.4%
Major Temporary Injury	\$232,239,600	6.9%
Minor Temporary Injury	\$79,407,350	2.4%
Emotional Injury Only	\$18,387,500	0.6%
Cannot Be Determined from Available Records	\$16,732,500	0.5%
Insignificant Injury	\$5,439,200	0.2%

Source: National Practitioner Data Bank.