

**Fewer Lawsuits
And More Doctors:
The Myths of Washington State's
Medical Malpractice "Crisis"**



**Congress Watch
September 2005**

Acknowledgments

This report was written by Public Citizen's Congress Watch Civil Justice Research Director Chris Schmitt, with contributions from Research Fellow Samantha Coulombe and Legislative Assistant Beth O'Brien, and editorial advice from Congress Watch Director Frank Clemente.

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Executive Summary

Medical mistakes kill and injure people – lots of them.

After years of studies, there is no doubt that many thousands of Americans die or suffer major injuries each year at the hands of medical negligence or error. A landmark study by the Institute of Medicine in 1999, for example, estimated that 44,000 to 98,000 patients die each year following preventable medical errors in hospitals alone.¹ Based on population, Washington state's share of this national death toll ranges from 930 to 2,070.² Moreover, other research indicates these findings are conservative.

Against that backdrop, troubling reports of malpractice by some Washington doctors unfortunately come as little surprise. Consider, for example, physician number 71545, as he or she is anonymously known in a federal database.³ This doctor had at least four malpractice episodes between 1995 and 2001, twice for failure to diagnose and twice for delay in surgical performance, prompting payments to patients totaling \$8.4 million. This doctor has also gone undisciplined by a state medical board. Or consider physician number 82913, who had at least eight malpractice payouts between 1995 and 2005 – three times for unspecified surgical errors, improper choice of delivery method, improper management of a surgical case, medication administered by the wrong route, surgery on the wrong body part, and performing an unnecessary surgical procedure. Total payments: \$2.2 million. Once again, there has been no disciplinary action.

The response of Washington doctors and their insurers to this abundance of abuse and neglect, as elsewhere, has been misguided: To blame the patient.

That's why in the fall of 2005, Washington is a key battleground in the national fight over medical malpractice. Faced with higher malpractice insurance premiums, doctors have joined insurers to assert the solution lies in limiting patients' ability to recover damages for the medical mistakes that have become such a routine part of patient care.

This attempt to curtail patients' legal rights has blossomed into a pair of dueling malpractice measures that voters will consider in November. On one side, Initiative 330, backed by the insurance industry, the pharmaceutical lobby, and the business and medical establishments, proposes severe restrictions on patient lawsuits, including:

- Generally limiting non-economic damages to \$350,000, which can be substantially less than compensation currently provided through settlements or jury verdicts.
- Shortening time limits for filing cases.
- Limiting plaintiffs' attorney fees, which would make it difficult for plaintiffs to find lawyers willing to handle malpractice matters.
- Requiring advance notice of lawsuits.
- Authorizing mandatory arbitration without trial.⁴

On the other side, Initiative 336 fires back. Backed by lawyers, consumer groups, labor unions, senior citizen organizations, and patients advocates, this counter-initiative would:

- Require notices and hearings prior to insurance rate increases.
- Establish a supplemental malpractice insurance program for liability exceeding private coverage. Health care facilities and providers would pay for coverage; the legislature could add state funds.
- Require license revocation proceedings for a doctor after three legally determined malpractice incidents, unless there are mitigating circumstances.
- Expand the state Medical Quality Assurance Commission by adding health care consumer representatives/advocates.
- Give patients or their families access to adverse medical incident reports.⁵

With a health care system spanning the rural areas of eastern and central Washington to the urbanized areas of Seattle and the Puget Sound, the state reflects the medical care challenges that face all of America. While there have been many attempts across the nation to restrict patients' legal rights, it is unusual for the malpractice issue to play out in a head-on, popular-vote clash between competing proposals in a large state, as is now true in Washington.

As Washington assumes this center-stage role, a Public Citizen analysis of recent data on malpractice payments made to injured patients and their families on behalf of Washington doctors shows there is no evidence the spike in some doctors' malpractice insurance rates is due to lawsuits and the legal system. Instead, as is true nationally, the evidence shows the increases are attributable to profit pressures created as part of the insurance industry's normal business cycle.

Much of this report is based on Public Citizen's analysis of information from the federal government's National Practitioner Data Bank (NPDB). (For information on the NPDB, see the section at the end of this report entitled, "Background on the NPDB and Methodology.") Major findings include:

- The number of malpractice payments made on behalf of Washington doctors each year – chiefly by their insurance companies – has declined 6.1 percent from 1991, the first full year of NPDB data, to 2004. More recently, the number of payments has fallen 35.6 percent, from a peak of 289 in 1999 to 186 in 2004. Even most recently, just when doctor and insurer complaints about the current "crisis" began, annual payments have declined 17.3 percent from 2001 to 2004.
- Adjusted for population growth, the number of payments has declined even more rapidly. Payments per 100,000 people are down 23.9 percent from 1991 through 2004, are down 39.4 percent since a peak in 1999, and are down 20 percent since 2001.
- Jury verdicts for malpractice have not exploded. The number of payments attributable to judgments has remained level since 1991 at a small portion of the overall caseload – about 3.1 percent.

- The total value of medical malpractice payments has fallen significantly, over both the long- and short-term. Since a peak in 1997, the total amount is down 42.2 percent, from an inflation-adjusted \$50.7 million to \$29.3 million in 2004. From an inflation-adjusted recent peak of \$42.2 million in 2002, the total in 2004 has fallen by 30.6 percent.
- As the number and total value of malpractice payments has fallen, the inflation-adjusted median value of payments has increased. Since 1998, the year before Washington's number of malpractice payments peaked, the median value has grown at an average annual rate of 4.2 percent, from \$75,300 to \$96,500. This increase is likely due to the climate becoming more hostile to pursuit of malpractice cases. As the overall number of cases has fallen, the cases remaining in the legal system tend to be those involving the most serious injuries, which produce larger compensation for victims.
- Million-dollar payouts – another rallying cry of critics – have fallen significantly, not increased, in recent years. The number of malpractice payments of \$1 million or more made for doctor malpractice, adjusted for inflation, has fallen from a high of 10 in 1997 to only two in 2004, which is the same number as in 1991. In all, million-dollar payouts accounted for just 1.1 percent of the number of malpractice payments in 2004, and only 7.3 percent of the total value.
- Rather than providing windfalls to patients with minor injuries, malpractice payments overwhelmingly benefit those most seriously injured. Newly available data shows that about 64 percent of payments made in 2004 and early 2005 involved the most serious injuries – significant or major physical injury, or death. Measured by value of damages paid, the most serious cases account for an even greater total – 84.9 percent of all payments made, compared to only 15.1 percent for minor injuries.
- Since a peak in the mid-1990s – years before the current complaints of crisis began – the population-adjusted number of malpractice filings has steadily declined. The number for 2004 is down 23.1 percent from the 1995 peak. In the last year alone, as doctors and insurers escalated their complaints and the litigation environment became more unfavorable to victims of negligence, the number was down 15.8 percent.
- Although some of the biggest complaints about malpractice rates concern obstetricians, malpractice payments attributable to OB cases are down significantly, whether measured by the number or value of OB-related payments. In the case of number of payments, OB cases' share of the total has fallen 25.4 percent, from a peak of 12.2 percent of all payments in 1994 to 9.1 percent in 2004. As for value of payments, OB cases' share of the total has fallen by 65.9 percent, from a peak of 31.7 percent of the value of all payments in 1994 to 10.8 percent in 2004.
- Doctors are not fleeing Washington. Even adjusted for population growth, the number of Washington doctors has increased significantly, from 294.3 doctors per 100,000 population in 1993 to 322.9 for 2005, according to Public Citizen analysis of information from the Washington Department of Health. Moreover, in the last four years, the rate of

increase has turned up significantly, from an annual average of 0.55 percent for 1993-2001 to 1.22 percent for 2001-04 – a jump of about 122 percent.

- Just as the total number of doctors in Washington is growing, so, too, is the number of newly licensed physicians. The population-adjusted number of newly licensed doctors has grown 20.2 percent over the last decade, or an average annual rate of 1.9 percent. Physician growth has turned up notably in the last two years, from 19.7 doctors per 100,000 population in 2003 to 22.0 in 2005 – an average yearly jump of nearly 6 percent.
- Specialty practice areas – said to be where the malpractice issue is felt most acutely, because they purportedly attract disproportionately more lawsuits – have not seen an outflow of board-certified doctors, according to Public Citizen analysis of information from the American Board of Medical Specialties. Instead, there have been mostly strong increases: Adjusted for population growth, the number of internists increased 28 percent from 1992 to 2004; the number of obstetricians grew by 21 percent; the number of surgeons has been level; and the number of emergency physicians has grown by 52 percent.
- Those seeking to limit patients’ legal rights often point to Washington’s west coast neighbor, California, as a model for malpractice liability change. With its Medical Injury Compensation Reform Act of 1975, California sharply limited patient malpractice compensation. Yet even without such a measure, growth in the number of Washington doctors has far outpaced that in California. This is true for physicians generally, as well as for those in specialty practices. From 1995 to 2004, for example, the population-adjusted number of physicians grew 9.1 percent in Washington, more than double the rate of 4.1 percent seen in California.
- As Public Citizen has found to be true nationally, a small number of doctors account for the lion’s share of all malpractice payments, and many of these “repeat offender” physicians go undisciplined by Washington authorities or other state medical boards. Just 4 percent of Washington doctors (about 600 physicians), each of whom has had two or more malpractice payouts, were responsible for 48.1 percent of all payments from 1990 to 2005, according to NPDB data. By contrast, 85 percent of Washington doctors have not had a malpractice payment since 1990.
- Only 19.9 percent of doctors with three or more malpractice payouts from 1990 to 2005 have been disciplined. Less than half – 44.7 percent – of doctors with five or more malpractice payouts have been disciplined by Washington authorities or a state medical board.
- Compared to other states, Washington ranks in the bottom 10 – number 42 – for its rate of serious doctor disciplinary actions. For the 2002-04 period, Washington reported 2.21 serious actions per 1,000 physicians, compared to 10.04 actions by the top-ranked state, Wyoming.

Public Citizen's analysis of NPDB data for Washington underscores that the real malpractice crisis today is inadequate patient safety, not lawsuits or the legal system. Rather than complain about malpractice liability, Public Citizen believes, doctors should improve their own performance, and thus better protect their patients.

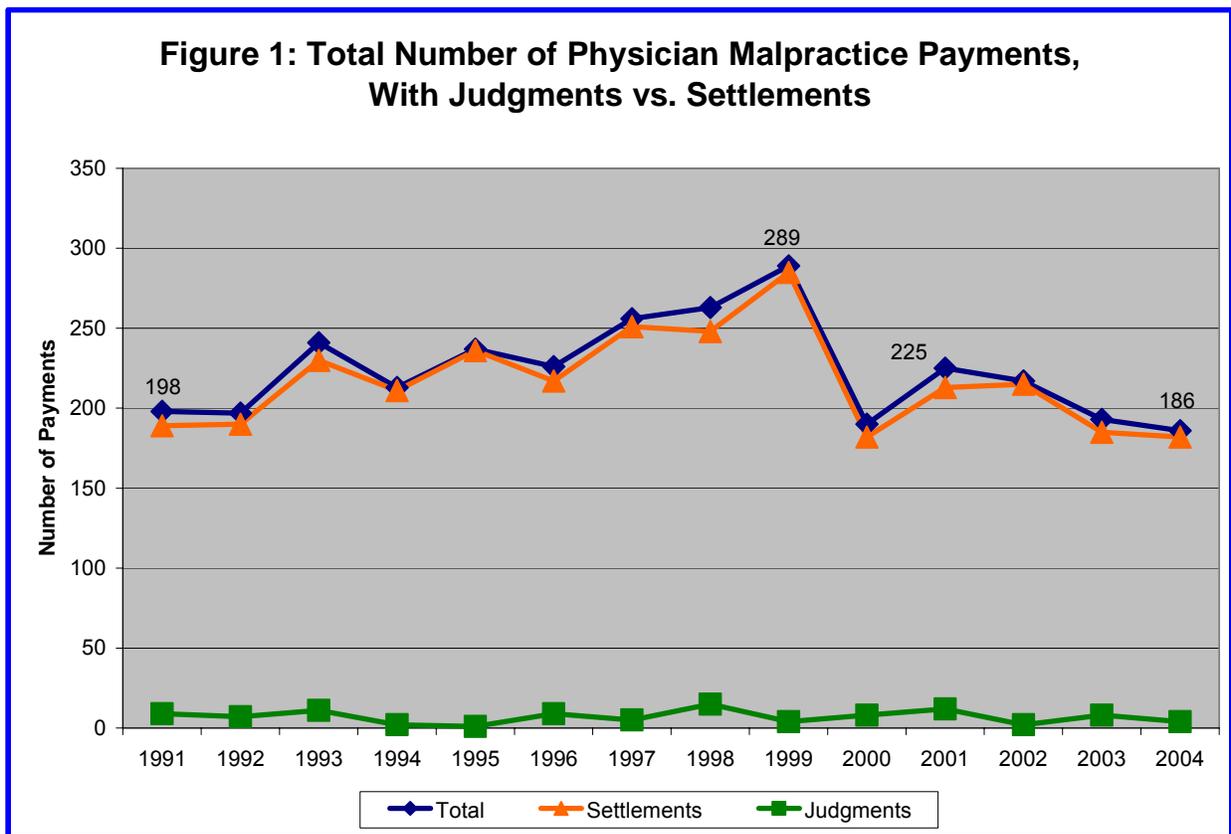
Anesthesiologists present a remarkable case in point. Concerned about patient safety and malpractice, anesthesiologists have made a systematic effort to improve their performance. The results have been striking, showing that a focus on safety not only significantly improves outcomes for patients, but also keeps down malpractice insurance costs for physicians. Anesthesiologists now pay an average of \$21,000 a year for malpractice insurance, which is less than what they paid 20 years ago, adjusted for inflation. Meanwhile, use of devices to alert physicians to potentially fatal problems in the operating room have, over the last 20 years, reduced the number of patient deaths due to anesthesia from one death in every 5,000 cases to only one death in 200,000 to 300,000 cases. Other physicians are taking note and moving to improve their treatment methods.⁶

Nationally, one-third of medical malpractice cases that produced a payout in 2004 and early 2005 – 5,442 – involved patient deaths, according to NPDB data.⁷ Yet, as the Institute of Medicine study indicates, stemming preventable errors in hospitals alone would conservatively prevent 10 times as many deaths as are now accounted for by malpractice cases.

Washington's Number of Physician Malpractice Payments Is Down

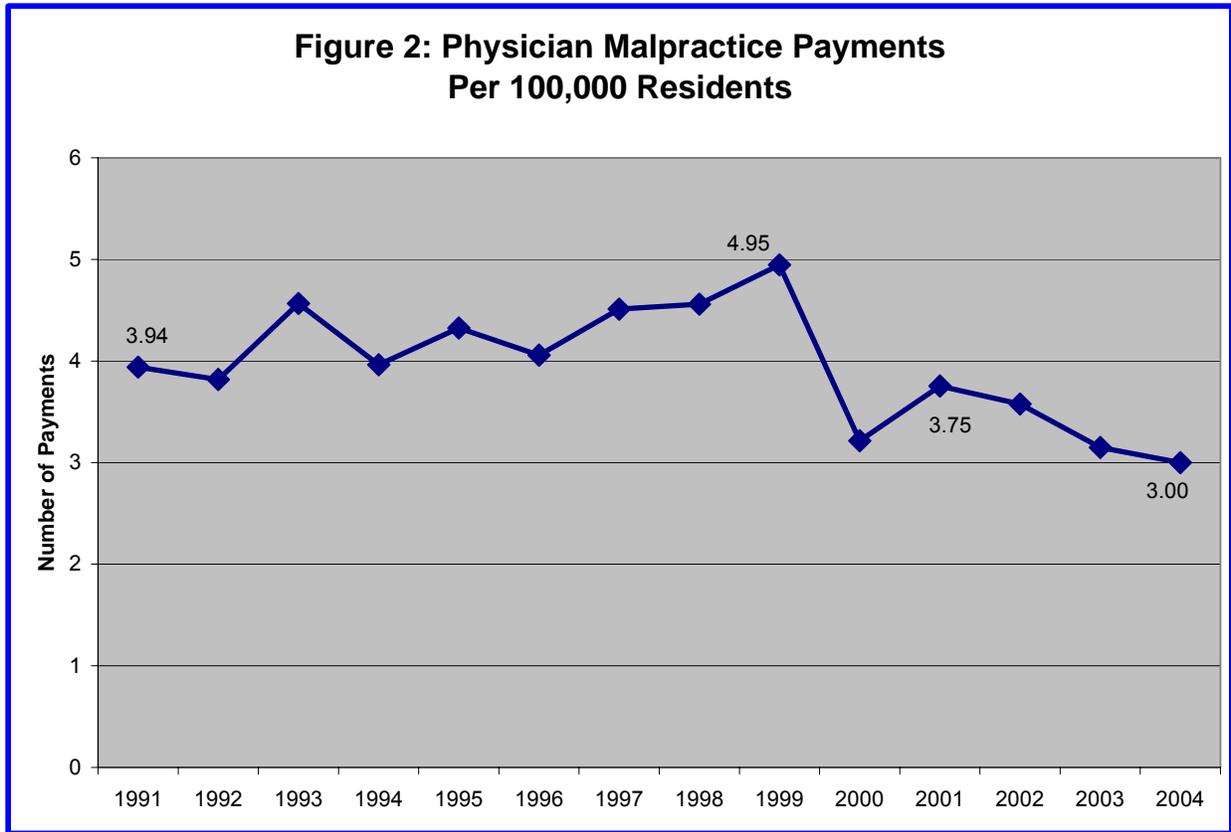
Like their counterparts nationally, Washington doctors and insurers complain of a growing medical liability crisis. But the number of malpractice payments paid on behalf of Washington doctors each year – chiefly by their insurance companies – has declined 6.1 percent from 1991 to 2004. The total number of payments has fallen 35.6 percent, from a peak of 289 in 1999 to 186 in 2004. Even during recent years when complaints about a crisis began, the number of annual payments declined 17.3 percent from 2001 to 2004. (Figure 1)

This information also shows that contrary to claims made, the number of malpractice jury verdicts has not exploded. The number of payments attributable to such judgments has remained level at a small portion of the overall caseload – about 3.1 percent.



Source: Public Citizen analysis of data from the National Practitioner Data Bank.

Adjusted for Washington's population growth, the number of payments per 100,000 people has declined even more rapidly. Payments are down 23.9 percent from 1991 through 2004, and are down 39.4 percent since the peak in 1999. Payments are also down 20 percent since 2001. (Figure 2)

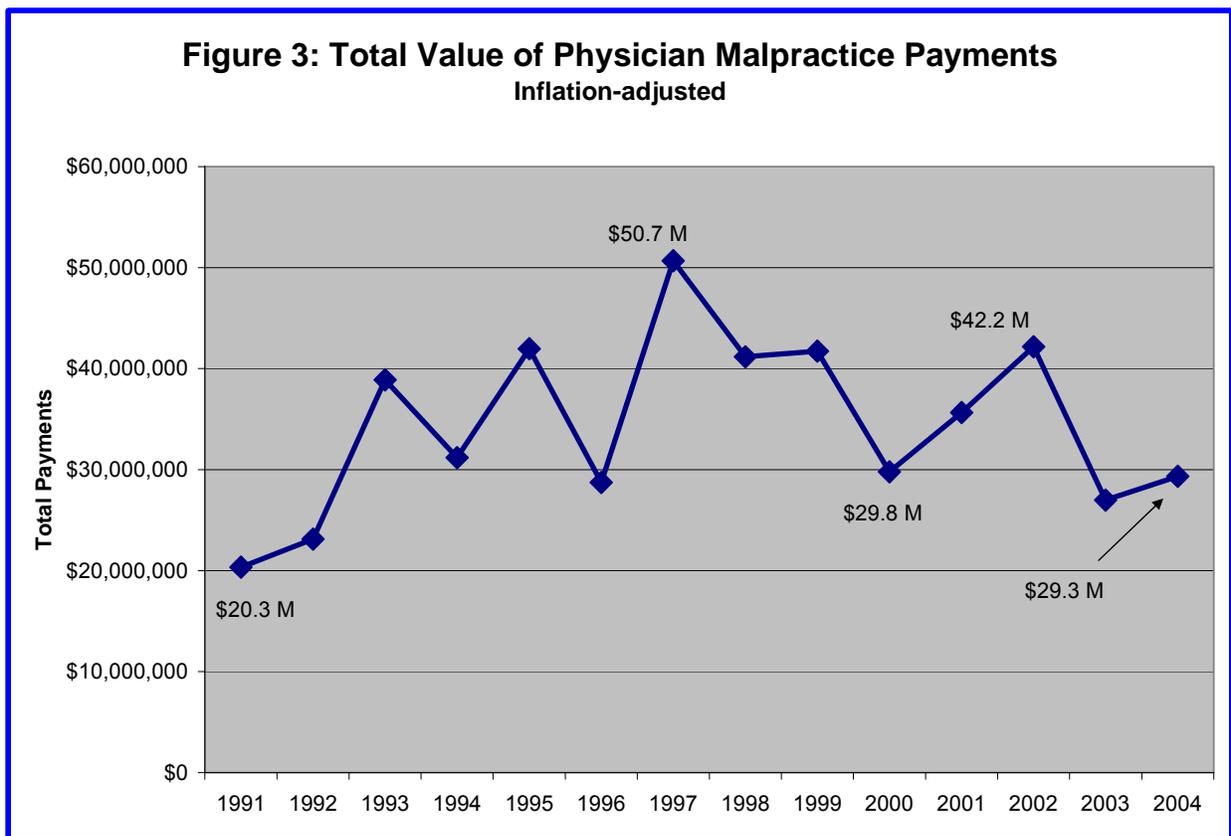


Source: Public Citizen analysis of data from the National Practitioner Data Bank, U.S. Census Bureau. Washington population, as reported by the Census Bureau's July 1 annual estimate, is:

1991	5,025,624
1992	5,160,757
1993	5,278,842
1994	5,375,161
1995	5,481,027
1996	5,569,753
1997	5,674,747
1998	5,769,562
1999	5,842,564
2000	5,911,182
2001	5,992,767
2002	6,067,146
2003	6,131,298
2004	6,203,788

The Total Value of Washington Physician Malpractice Payments Is Down Considerably

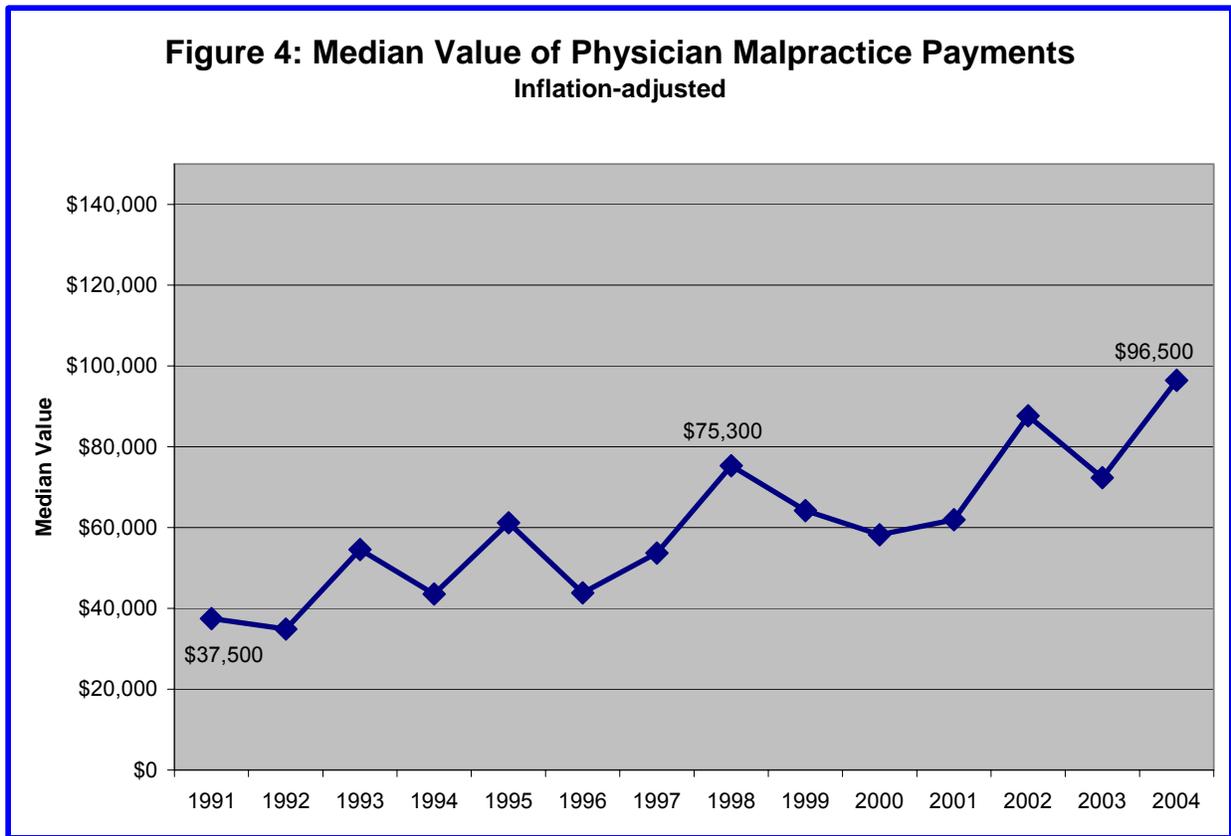
The total value of malpractice payments made to patients or their families on behalf of Washington doctors has fallen significantly, over both the long- and short-term. Since an inflation-adjusted peak in 1997, the total is down 42.2 percent, from \$50.7 million to \$29.3 million in 2004. (Medical inflation, measured by the U.S. Bureau of Labor Statistics, has averaged 4.7 percent annually from 1991 to 2004.) From an inflation-adjusted recent peak of \$42.2 million in 2002, the total in 2004 has fallen 30.6 percent. (Figure 3)



Source: Public Citizen analysis of data from the National Practitioner Data Bank.

Note: The price 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.

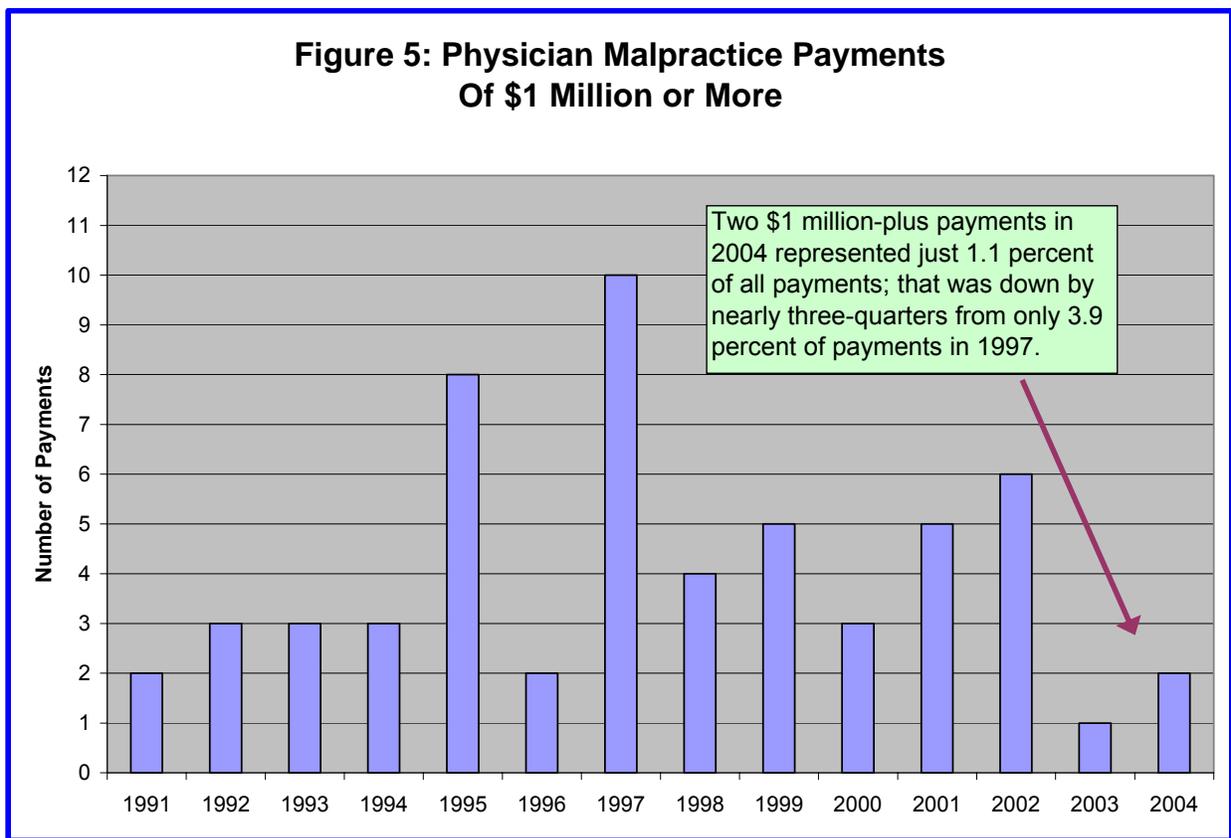
As both the number and total value of Washington doctors' malpractice payments to patients or their families has fallen, the median value, adjusted for medical inflation, has increased. (The median value is the midpoint between the highest and lowest payments.) Since 1998, the year before Washington's number of malpractice payments peaked, the median value has grown at an average annual rate of 4.2 percent, from \$75,300 to \$96,500. (Figure 4) This increase is likely due to the climate becoming more hostile to pursuit of malpractice cases. As the overall number of cases has fallen (Figures 1 and 2), the cases remaining in the legal system tend to be those involving the most serious injuries, which produce larger compensation for victims. As noted in Figure 3, despite the higher median payment, total payments are down substantially.



Source: Public Citizen analysis of data from the National Practitioner Data Bank.

Washington's Number of Multimillion-Dollar Payouts, Never Numerous, Has Fallen Sharply

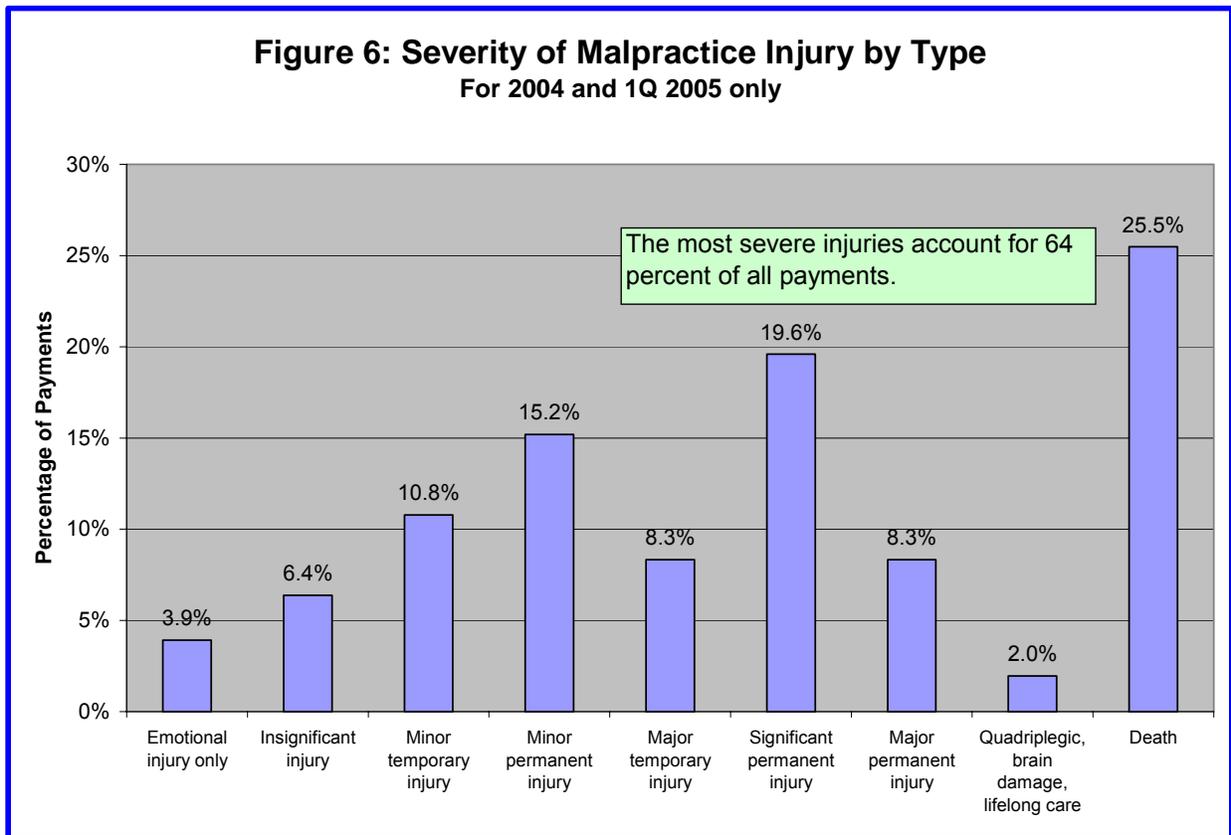
Those seeking to limit patients' ability to recover damages complain of a surge in multimillion-dollar payments. But in Washington, as for the nation, the trend has been the opposite. The number, and proportion, of malpractice payments of \$1 million or more, adjusted for inflation, have fallen sharply in recent years, from a high of 10 in 1997 to only two in 2004, the same number as in 1991. (Figure 5) Washington also does not allow punitive damages in malpractice cases, meaning that no matter how extreme an incident of malpractice may be, there can be no sanctions aimed at deterring mistakes and encouraging quality care.



Source: Public Citizen analysis of data from the National Practitioner Data Bank.

The Most Severe Injuries in Washington State Account for the Bulk of Malpractice Payouts

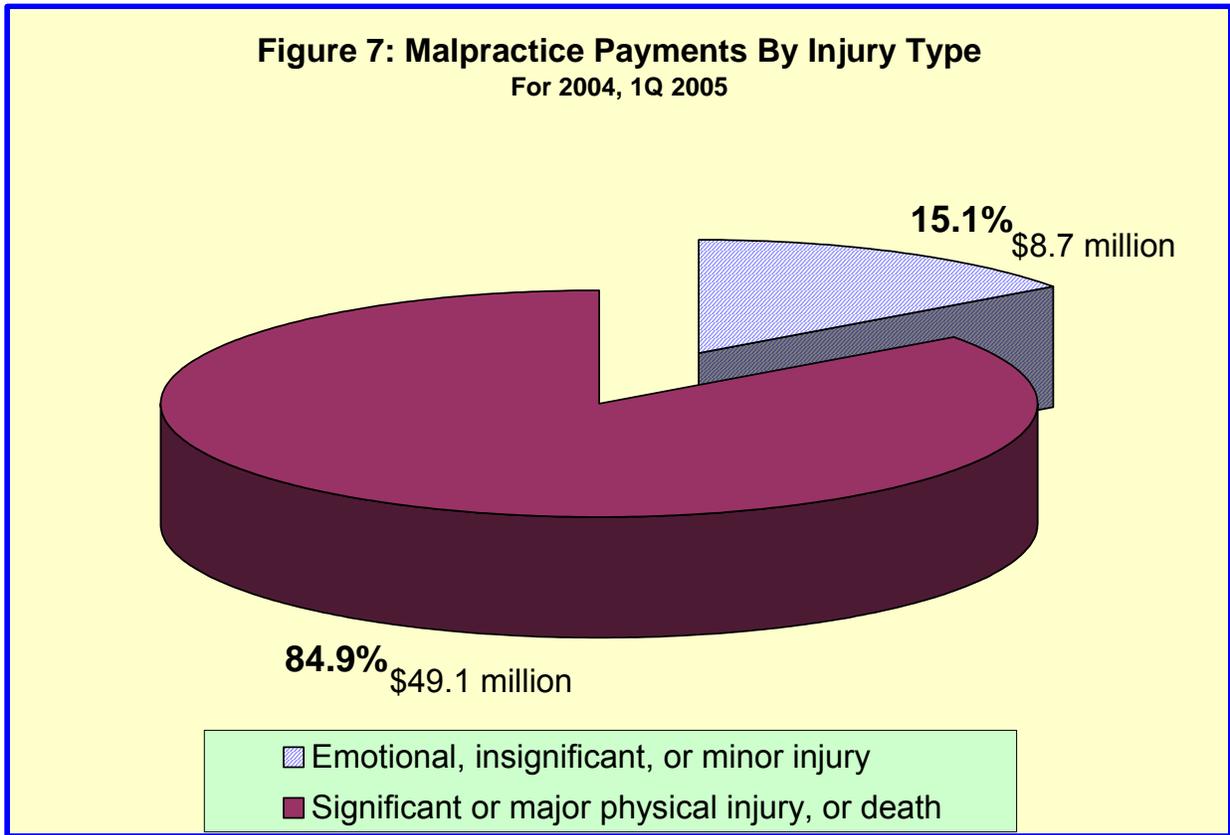
Rather than providing windfalls to patients seeking compensation for minor injuries, the medical negligence system is rational in its outcomes, new data reported to the NPDB shows. In Washington, 63.7 percent of payments for 2004 and early 2005 involved significant or major physical injuries, or death, according to this new information. (Figure 6)



Source: Public Citizen analysis of data from the National Practitioner Data Bank.

Note: Data on severity of injury available as of January 31, 2004; 204 cases available for analysis for Washington for 2004 and early 2005.

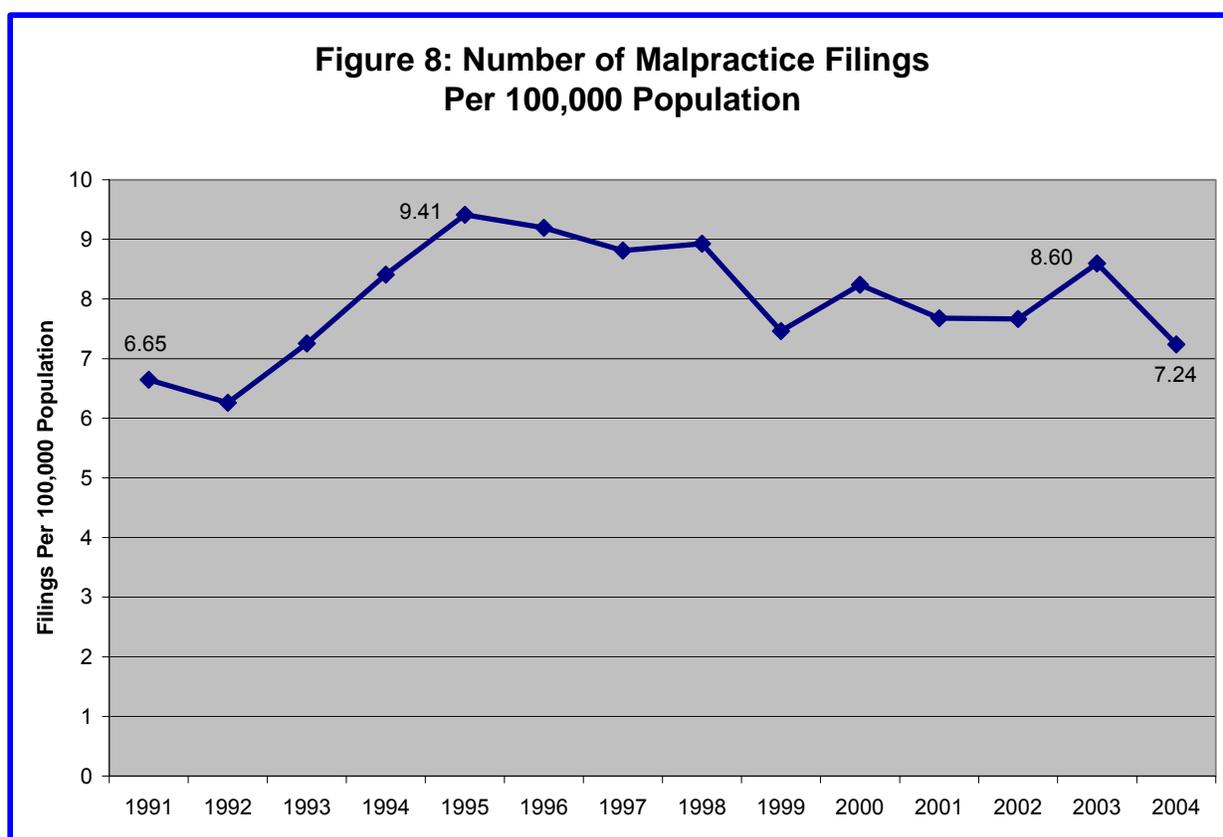
Measured by total damages paid out in Washington, rather than by number of payouts, the most serious cases account for an even greater proportion – 84.9 percent of the total payments made, compared to only 15.1 percent for minor injuries.⁸ (Figure 7)



Source: Public Citizen analysis of data from the National Practitioner Data Bank.

The Number of Malpractice Filings Has Been Declining for a Decade

From a peak in the mid-1990s – years before the current complaints of crisis began – the population-adjusted number of malpractice filings has steadily been declining. Thus, even as Washington doctors have recently staged rallies in support of limiting the rights of their patients, it was already clear the number of filings has been dwindling.⁹ The rate for 2004 is down 23.1 percent from the 1995 peak. In the last year alone, as doctors and insurers escalated their complaints, which made the litigation environment more hostile to victims of negligence, the number was down 15.8 percent. (Figure 8)

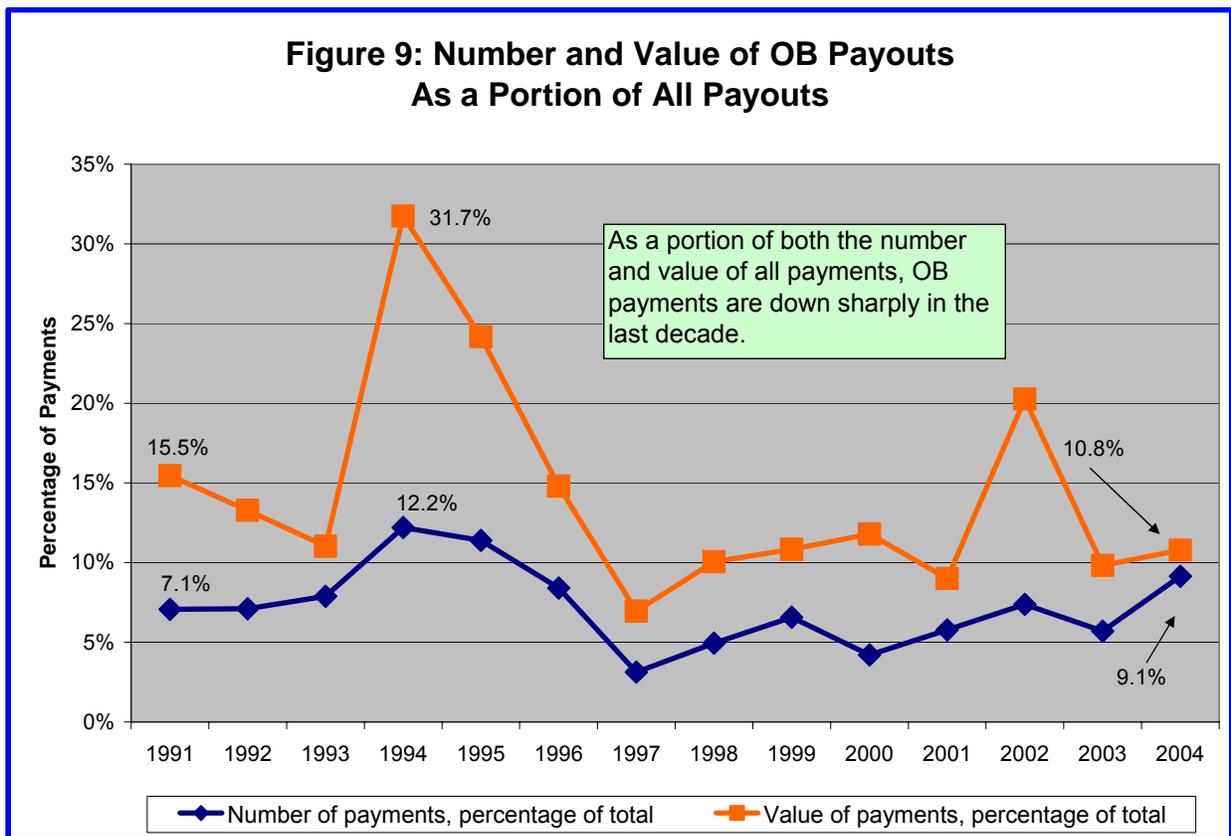


Source: Washington State Administrative Office of the Courts.

Washington Physicians' Obstetrics Payouts Are Down Markedly

Among doctors, the loudest complaints about big jumps in malpractice insurance rates concern obstetrics. However, malpractice payments attributable to OB cases – which are a small share of overall payments – are down significantly, whether measured by *number* of OB-related cases or *value* of OB-related payments.¹⁰ In the case of number of payments, OB cases' share of the total has fallen 25.4 percent, from a peak of 12.2 percent of all payments in 1994 to 9.1 percent in 2004. As for value of payments, OB cases' share of the total has fallen by 65.9 percent, from a peak of 31.7 percent of the value of all payments in 1994 to 10.8 percent in 2004. (Figure 9)

This suggests that if OB physicians' malpractice premiums have jumped, the explanation does not lie in the number or value of such payouts – in other words, the legal system.



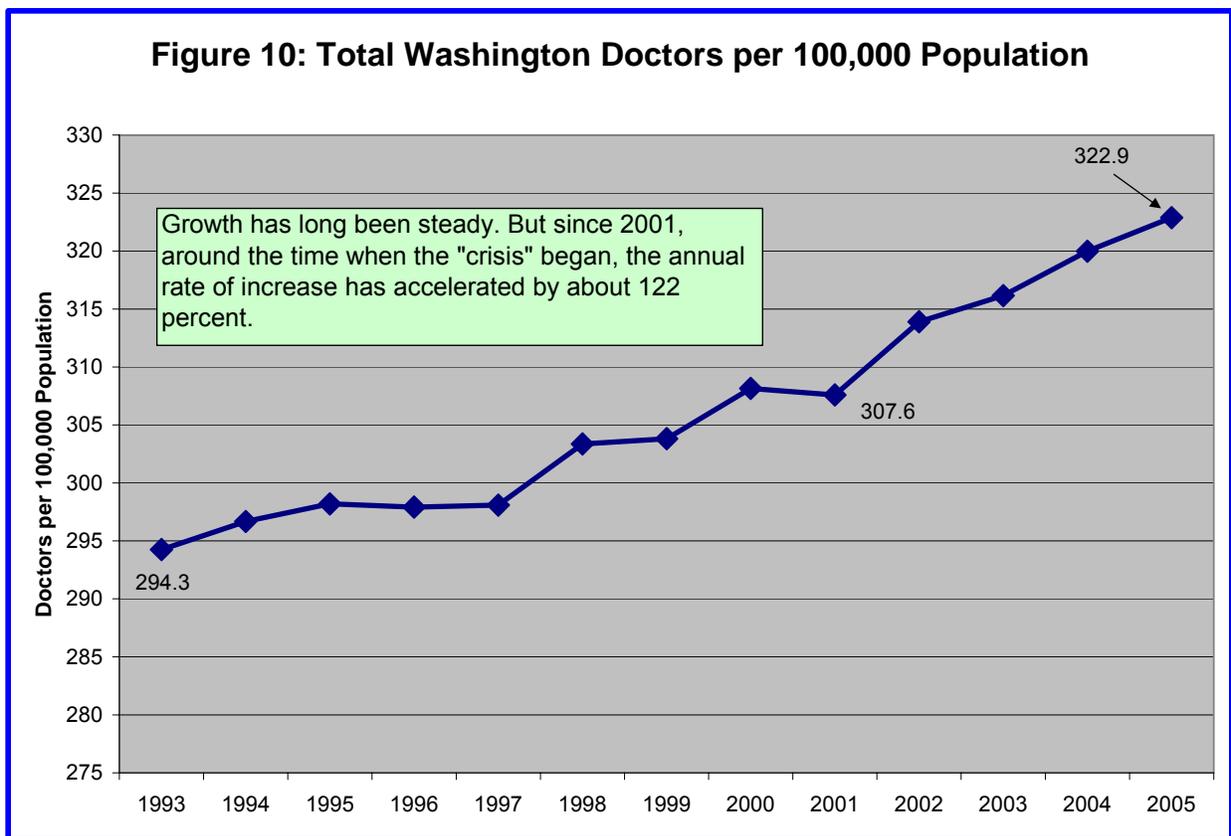
Source: Public Citizen analysis of data from the National Practitioner Data Bank.

Doctors Are Not Fleeing Washington; Instead, There Has Been Strong Growth

“Doctors are being driven away by ever increasing liability insurance premiums.”

— Doctors, Nurses and Patients for a Healthy Washington,
supporters of Initiative 330¹¹

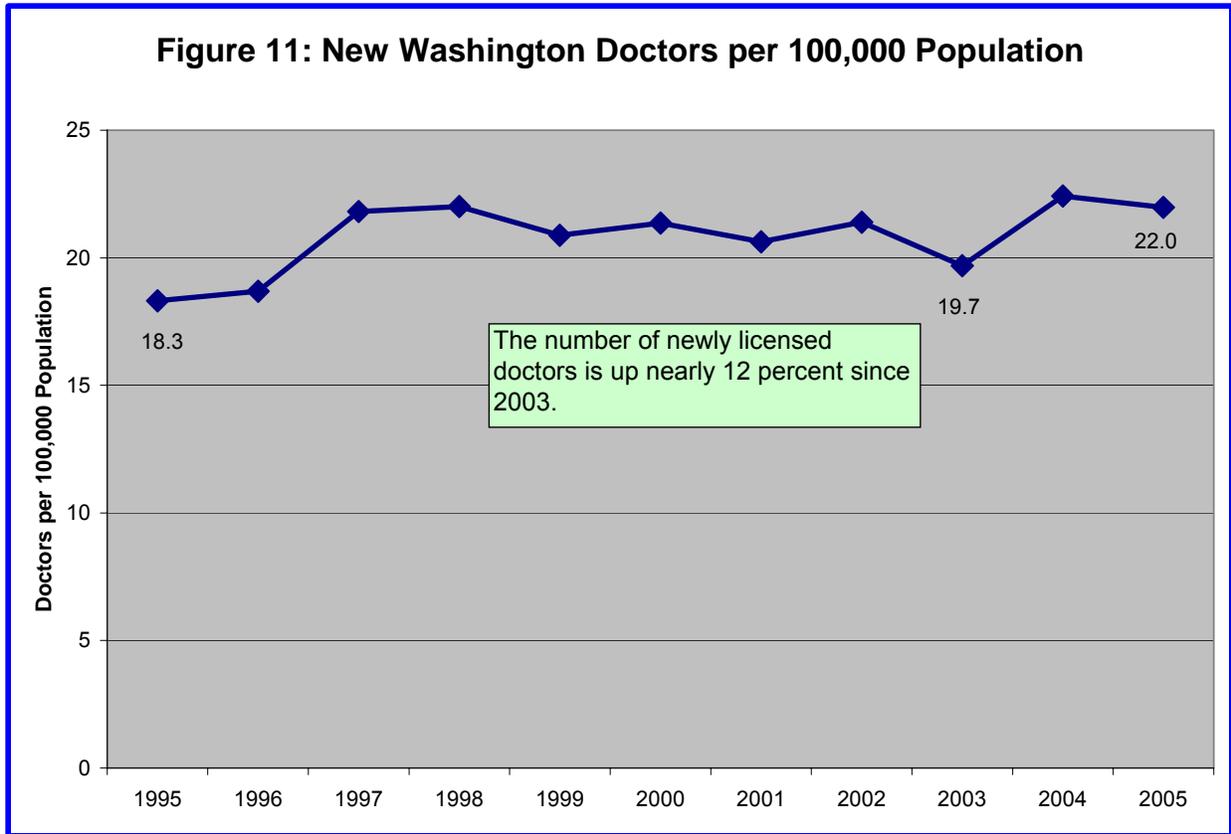
Actually, the opposite is true, as the physician rolls have been expanding significantly. Like doctors elsewhere, Washington physicians complain that malpractice insurance rates are causing doctors to leave practice, by retiring, moving out-of-state or ceasing to provide certain treatments or services. But even adjusted for population growth, the number of Washington doctors with active licenses has increased markedly, growing from 294.3 doctors per 100,000 population in 1993 to 322.9 for 2005. Moreover, in the last four years, the rate of increase has turned up significantly, from a 0.55 percent average annual rate for 1993-2001 to 1.22 percent for 2001-04 – an increase of about 122 percent. (Figure 10)



Source: Public Citizen analysis of data from the Washington Department of Health, U.S. Census Bureau. Notes: Population figure for 2005 unavailable, but was estimated as an average of the annual growth for 1999-2004. Number of doctors for 2005 is as projected by the Department of Health. Years shown reflect period for which data was available.

Just as the total number of doctors in Washington is growing, so, too, is a closely related indicator – the number of newly licensed physicians. According to doctors and their insurers, the malpractice crisis means new physicians are avoiding Washington.

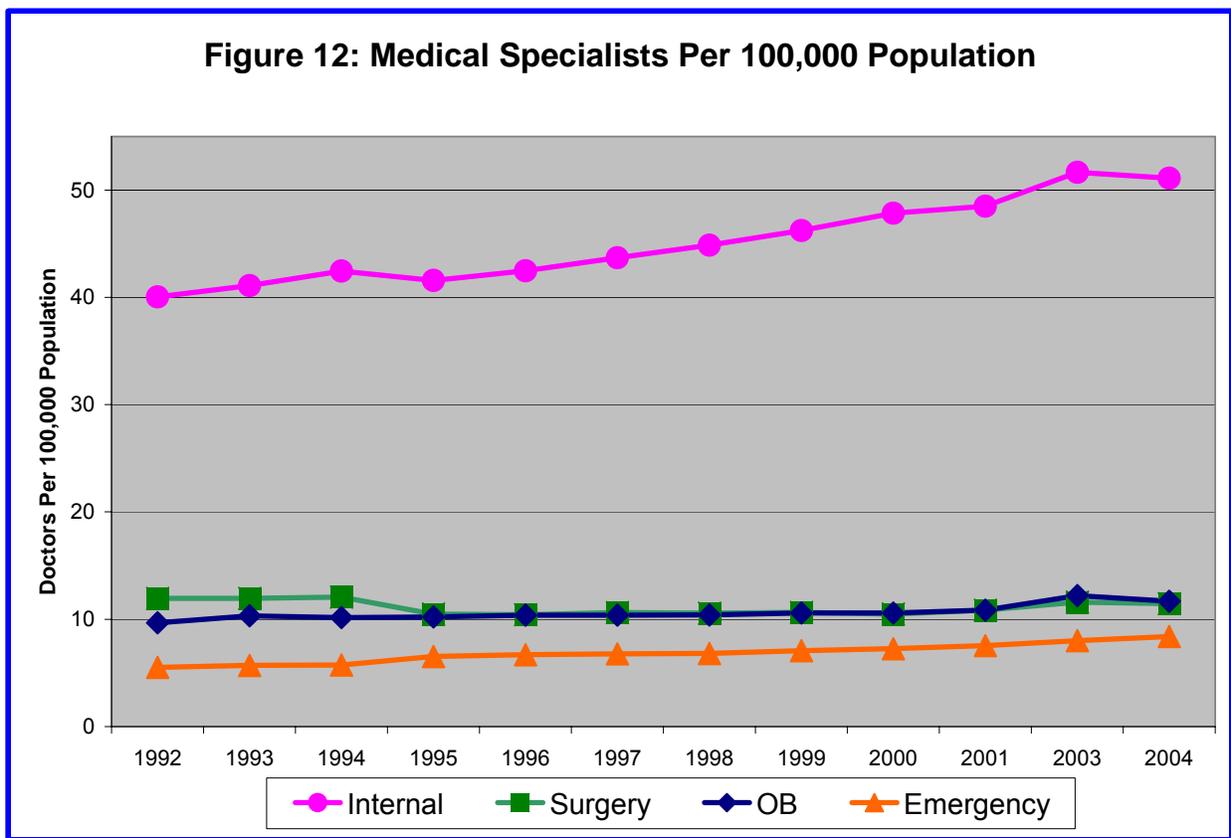
But the reverse is true. Even adjusted for population growth, the number of newly licensed doctors has grown 20.2 percent over the last decade, or 1.9 percent on an average annual basis. The growth has turned up markedly in the last two years, increasing from 19.7 doctors per 100,000 population in 2003 to 22.0 in 2005, for an average annual increase of 5.7 percent. (Figure 11)



Source: Public Citizen analysis of data from the Washington Department of Health, U.S. Census Bureau. Notes: Population figure for 2005 unavailable, but was estimated as an average of the annual growth for 1999-2004. Number of newly licensed doctors for 2005 is as projected by the Department of Health. Years shown reflect period for which data was available.

Doctors and their insurers say specialty practice areas are where the impact of higher malpractice costs is most acutely felt. It is these areas, they complain, that especially attract meritless lawsuits, which in turn encourage doctors to leave their practices. But in Washington, there has been no outflow of board-certified physicians from these specialty areas. Instead, there has been mostly strong growth (Figure 12):

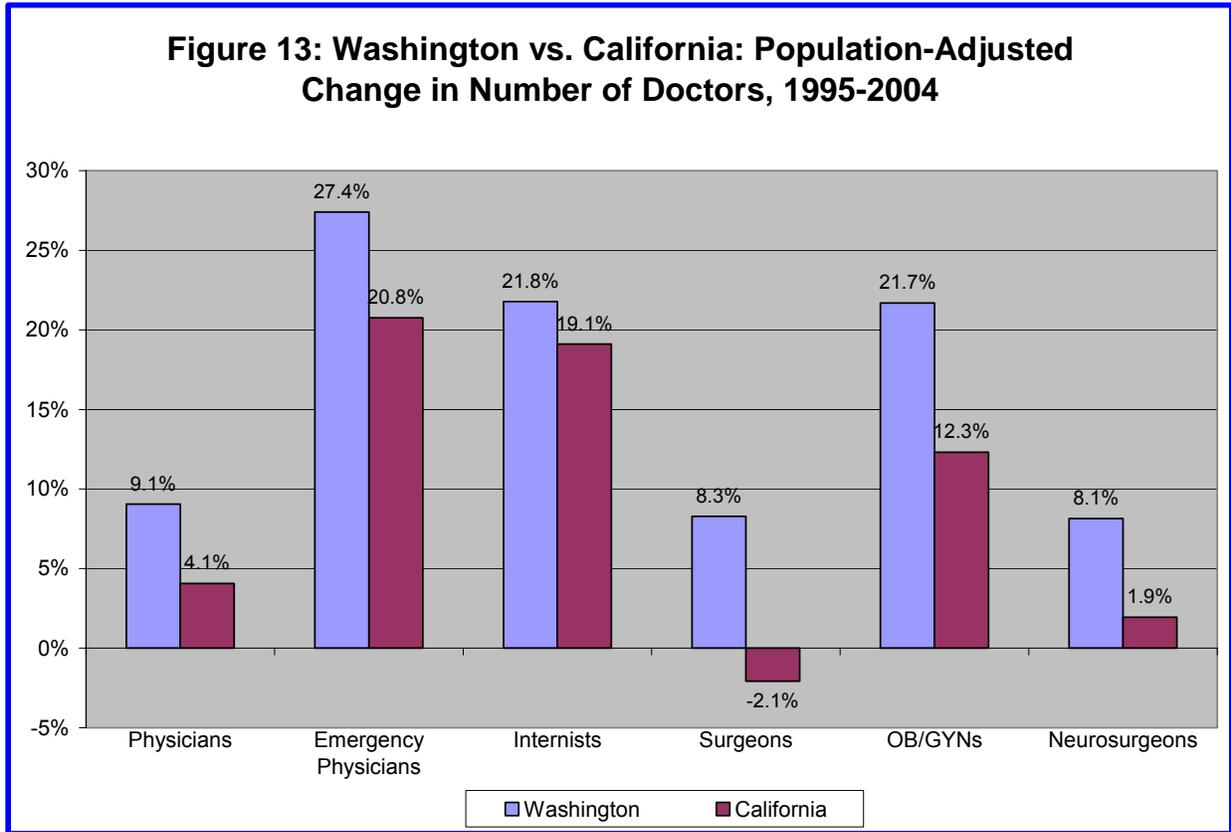
- The number of internists has increased by 28 percent, from 40.03 per 100,000 population in 1992 to 51.1 in 2004.
- The number of obstetricians has increased by 21 percent, from 9.67 per 100,000 population in 1992 to 11.69 in 2004.
- The number of surgeons has been level, moving from 11.94 per 100,000 population in 1992 to 11.44 in 2004.
- The number of emergency physicians has increased by 52 percent, from 5.52 per 100,000 population in 1992 to 8.40 in 2004.



Source: Public Citizen analysis of data from the American Board of Medical Specialties, U.S. Census Bureau.

Note: ABMS data unavailable for 1991, 2002.

Those seeking to limit patients’ legal rights often tout Washington’s west coast neighbor, California, as a model for malpractice liability change. With its MICRA – the Medical Injury Compensation Reform Act of 1975 – California long ago enacted strict limits on patient malpractice compensation. Yet even without malpractice “reforms” like those provided by MICRA, Washington’s growth in number of doctors has far outpaced California’s. This is true for physicians generally, as well as for doctors in specialty practices. (Figure 13)



Sources: Federation of State Medical Boards, U.S. Census Bureau, American Board of Medical Specialties

Note: Physicians are per 1,000 population; emergency physicians and neurosurgeons are per 100,000 population; internists, surgeons and OB/GYNs are per 10,000 population.

Only 4 Percent of Washington Doctors Are Responsible for Nearly Half of Malpractice Payouts

The insurance and medical communities argue that medical malpractice litigation amounts to a giant lottery, in which lawsuits are random events unrelated to the care provided by a physician. But in fact, most people harmed by medical malpractice do not sue, according to studies, which suggest that only about one in six instances of medical error results in a malpractice claim.¹² Key reasons are that bringing a successful malpractice action is a difficult, expensive proposition, and attorneys can be reluctant to accept cases because they are paid only if they win. What is clear, though, according to NPDB data, is that a small percentage of Washington doctors have had multiple claims paid, and it is these doctors who are responsible for much of the malpractice. (Figure 14)

- Just 4.0 percent of Washington doctors have been responsible for 48.1 percent of all malpractice payouts to patients, according to NPDB data from September 1990 through early 2005. Each of these doctors has made at least two payouts.
- Just 1.3 percent of doctors, each of whom has had three or more malpractice payouts, were responsible for 25.1 percent of all payouts.
- Just 0.5 percent of doctors, each of whom has had four or more malpractice payouts, were responsible for 15.5 percent of all payouts.
- About 85 percent of Washington doctors have never had a medical malpractice payout since the NPDB was created in 1990.

Figure 14: Number and Amounts of Medical Malpractice Payouts To Patients Paid on Behalf of Washington Doctors, 1990-2005

Number of Payout Reports	Number of Doctors With Payouts	Total Number of Payouts	Percentage of Total Doctors (15,370)	Percentage of Total Number of Payouts	Total Amount of Payouts
All	2,295	3,248	14.9%	100.0%	\$689,299,750
1	1,685	1,685	11.0%	51.9%	\$374,407,900
2 or more	610	1,563	4.0%	48.1%	\$314,891,850
3 or more	201	815	1.3%	25.1%	\$132,528,100
4 or more	83	504	0.5%	15.5%	\$82,206,350
5 or more	28	356	0.2%	11.0%	\$47,278,500

Source: Public Citizen analysis of data from the National Practitioner Data Bank; number of doctors from American Medical Association, "Physician Characteristics and Distribution in the US," calculated as an average of total doctors for 1995 and 2001, which is the mid-point of the period studied.

Washington Doctors with Repeated Malpractice Payouts Suffer Few Consequences

By focusing attention on repeat offenders, overall patient safety can be dramatically improved. Local medical boards and health care providers have not done enough to rein in doctors who repeatedly make medical errors and commit medical negligence. Disciplinary actions such as license suspension or revocation have been infrequent for many Washington physicians with multiple malpractice payouts (Figure 15):

- Only 12.5 percent of Washington doctors with two or more malpractice payouts were disciplined by Washington authorities, or another state medical board.
- Only 19.9 percent of doctors with three or more malpractice payouts were disciplined.
- Only 44.7 percent of doctors with five or more malpractice payouts were disciplined.

Compared to other states, Washington ranks in the bottom 10 – number 42 – for its rate of serious doctor disciplinary actions, Public Citizen has found. For the 2002-04 period, Washington reported 2.21 serious actions per 1,000 physicians, compared to 10.04 actions by the top-ranked state, Wyoming.¹³

Figure 15: Washington Doctors with Two or More Medical Malpractice Payouts Who Have Been Disciplined (Reportable Licensure Actions), 1990 – 2005

Number of Payout Reports	Number of Doctors With Payouts	Number of Doctors With One or More Reportable Licensure Actions	Percent of Doctors With One or More Reportable Licensure Actions
2 or more	610	76	12.5%
3 or more	201	40	19.9%
4 or more	83	27	32.5%
5 or more	38	17	44.7%
10 or more	6	5	83.3%

Source: Public Citizen analysis of data from the National Practitioner Data Bank

Examples of Washington Repeat Offender Doctors Who Have Gone Undisciplined

The extent to which doctors have multiple payouts for medical malpractice claims and go undisciplined is illustrated by the following NPDB descriptions of 10 Washington physicians. Each has had between 4 and 8 malpractice payouts totaling at least \$1.4 million, yet they have not been disciplined by a state medical board.¹⁴ The NPDB does not disclose to the public the identity of these physicians. (Generally, that information is available only to health care providers or licensing authorities. For a description of the NPDB, see the following section, “Background on the NPDB and Methodology.”)

- **Physician Number 71545** had at least 4 malpractice payouts between 1995 and 2001, twice for failure to diagnose and twice for delay in surgical performance. The damages total \$8,435,000.
- **Physician Number 82913** had at least 8 malpractice payouts between 1995 and 2005, three times for unspecified surgical errors, improper choice of delivery method, improper management of a surgical case, medication administered by the wrong route, surgery on wrong body part, and performing an unnecessary surgical procedure. The damages total \$2,172,500.
- **Physician Number 40142** had at least 6 malpractice payouts between 1993 and 2002, twice for improper choice of delivery method, delay in obstetrics performance, an improperly performed vaginal delivery, leaving surgical or other foreign body in the patient, and failure to obtain consent or lack of informed consent. The damages total \$2,087,500.
- **Physician Number 39922** had at least 5 malpractice payouts between 1991 and 2003, for improper management of a surgical case, leaving a surgical or other foreign body in the patient, surgery on wrong body part, performing an unnecessary surgical procedure, and an unspecified surgical error. The damages total \$2,065,000.
- **Physician Number 40254** had at least 7 malpractice payouts between 1992 and 2003, three times for unspecified surgical errors, twice for wrong treatment, improper surgical performance, and surgery on wrong body part. The damages total \$1,592,000.
- **Physician Number 181876** had at least 4 malpractice payouts between 2002 and 2004, twice for unspecified surgical errors, improper surgical performance, and unnecessary surgical procedure. The damages total \$1,565,000.
- **Physician Number 87107** had at least 4 malpractice payouts between 1996 and 2003, three times for unspecified surgical errors, and improper surgical performance. The damages total \$1,490,000.

- **Physician Number 40471** had at least 5 malpractice payouts between 1991 and 1994, all five times for failure to diagnose. The damages total \$1,437,500.
- **Physician Number 40588** had at least 4 malpractice payouts between 1991 and 2003, for failure to use aseptic (sterile) technique, delay in diagnosis, improper surgical performance, and leaving a surgical or other foreign body in the patient. The damages total \$1,422,500.
- **Physician Number 87355** had at least 4 malpractice payouts between 1996 and 1998, twice for improper surgical performance, failure to obtain consent or lack of informed consent, and an unspecified monitoring error. The damages total \$1,412,500.

Background on the NPDB and Methodology

The National Practitioner Data Bank contains, among other things, reports on malpractice payments made by doctors' 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 identifying particular doctors 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.

The NPDB's major purpose is to provide a repository of data that institutions employing or reviewing doctors, or granting clinical privileges to them – such as state licensing boards, hospitals or other health care providers – can query for background information on a particular physician's credentials. As the NPDB itself says: “The information contained in the NPDB is intended to direct discrete (sic) inquiry into and scrutiny of specific areas of a practitioner's licensure, professional society memberships, medical malpractice payment history, and record of clinical privileges. NPDB information is an important supplement to a comprehensive and careful review of a practitioner's professional credentials.”¹⁵

NPDB data is currently available for a portion of 1990, full years for 1991 through 2004, and a portion of 2005. 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 2005.

Doctors and their insurers criticize use of the NPDB, saying it provides incomplete information. However, the NPDB is the only nationally mandated source of information for actual payments made to compensate patients in malpractice cases. Looking at actual amounts paid out is important because insurers' estimates of future losses to be paid are only that, and often are revised later. Also, large jury verdicts are often later settled at much lower amounts; typically, at the limits of a doctor's insurance coverage. The U.S. Government Accountability Office has used NPDB data in its research, as have academic researchers whose work is peer-reviewed.



Suggested citation for information in this report: Public Citizen's analysis of malpractice payments for Washington doctors, as reported in the National Practitioner Data Bank public use file, for the years 1991 to 2004.

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

ENDNOTES

¹ “To Err Is Human: Building a Safer Health System,” Institute of Medicine of the National Academies, Division of Health Care Services, November 1999.

² The U.S. Census Bureau’s July 1, 2004 population estimate for Washington was 6,203,788; for the United States, 293,655,404. Actual figures for Washington deaths may vary to the extent Washington’s population is unrepresentative of the nation, but population is selected as a reasonable proxy.

³ The National Practitioner Data Bank. See section of this report entitled, “Background on the NPDB and Methodology.”

⁴ Washington Secretary of State’s office; see <http://www.secstate.wa.gov/elections/initiatives/signatures2005.aspx>.

⁵ *Id.*; see also <http://www.secstate.wa.gov/elections/initiatives/text/i336.pdf>.

⁶ See “Heal Thyself: Once Seen As Risky, One Group Of Doctors Changes Its Ways,” *Wall Street Journal*, June 21, 2005, page A1.

⁷ This data is for the period January 31, 2004 forward.

⁸ Because the number of cases available for analysis is relatively small, Public Citizen does not disaggregate Washington’s total malpractice payments beyond the two categories shown, namely “emotional, insignificant, or minor” and “significant or major physical injury, or death.”

⁹ In 2003, doctors across the state held lunchtime rallies, including in Seattle, Tacoma and Walla Walla. Doctors in other states have held similar demonstrations, plus in Washington, D.C.

¹⁰ The NPDB does not identify obstetricians directly, but rather identifies obstetrics-related cases.

¹¹ See <http://www.yesoni330.org/>

¹² See, for example: Harvard Medical Practice Study Group, “Patients, Doctors and Lawyers: Medical Injury, Malpractice Litigation, and Patient Compensation in New York,” 1990; Studdert et al., “Beyond Dead Reckoning: Measures of Medical Injury Burden, Malpractice Litigation, and Alternative Compensation Models from Utah and Colorado,” 33 *Ind. L. Rev.* 1643 (2000); and the Florida Agency for Health Care Administration, Division of Health Quality Assurance, “Reported Malpractice Claims by District Compared to Reported Adverse Incidents 1996, 1997, 1998, 1999, 2000, 2001, 2002, 2003.”

¹³ “Serious” actions are license revocations, surrenders, suspensions and probation/restrictions. See “Ranking of the Rate of State Medical Boards’ Serious Disciplinary Actions: 2002-2004,” by Public Citizen’s Health Research Group, Publication #1737, available at <http://www.citizen.org/publications/release.cfm?ID=7380>.

¹⁴ The NPDB codes payment amounts into ranges. The damage amounts are thus approximations of the actual amounts paid.

¹⁵ See “Fact Sheet on the National Practitioner Data Bank,” available at http://www.npdb-hipdb.com/pubs/fs/Fact_Sheet-National_Practitioner_Data_Bank.pdf