

Discipline of Bad Doctors and Medical Malpractice Insurance Premiums

Based upon data from the Federation of State Medical Boards on the number of disciplinary actions taken against doctors in the period of time 2002 to 2004, *Public Citizens Health Research Group* calculated that the rate of serious disciplinary actions per 1,000 doctors was very low.

There were 3,296 serious disciplinary actions taken by State Medical Boards in 2004, up from 2,992 serious actions taken in 2003.

It was noted that Boards which discipline doctors do a better job if the following conditions are met:

1. Adequate Funding
2. Adequate Staffing
3. Proactive Investigations
4. Use of Available and Reliable Data
5. Leadership
6. Independence from State Medical Societies
7. Legal Framework for Disciplining Doctors

The states with the most vigorous disciplinary enforcement in the top ten category are:

1. Wyoming
2. Kentucky
3. North Dakota
4. Alaska
5. Oklahoma
6. Arizona
7. Ohio
8. Montana
9. Colorado
10. West Virginia

New York is fairly high at 17, with neighboring states such as New Jersey and Pennsylvania ranking much lower. New Jersey was 29th on the list, and Pennsylvania was 36th. In Pennsylvania there were 153 serious actions taken in 2004. The state has a high number of physicians, 40,542 in 2003.

Therefore, the serious actions per 1,000 physicians in Pennsylvania from 2002 to 2004 is 2.60.

Pennsylvania has gone from 47th in the nation, in doctor discipline, up to 36th, which is somewhat of an improvement but not much.

New York has improved from 29th to 17th, and New Jersey has gone from 19th to 29th.

Hawaii ranks as the worst in the country in disciplining bad doctors.

Public Citizen also looked at the question concerning medical malpractice payouts. At the same time that insurance rates in some areas have been climbing, the number and value of medical malpractice payments to patients has been flat since 1991, and in fact showed a significant decline since 2001, when the spike in insurance rates began.

The data shows that from 1990 to 2004, only 5.5 percent of doctors accounted for 57.3 percent of all medical malpractice payouts. In addition, only 11.4 percent of doctors who have made three or more malpractice payments have ever been disciplined!

The data shows the following:

1. The annual number of malpractice payments is down. Adjusting for population growth, the number of payouts per 100,000 people has fallen from 5.85 to 4.91 from 2001; a decline of 16.1 percent. Since 1991, the number of payments per 100,000 people dropped by 9.2 percent, from 5.41.

2. The total value of malpractice payments has been flat since 1991. Adjusting for inflation, the amount of payouts has shown an average annual increase of only 0.8 percent, far less than the cost of medical inflation.

3. Jury verdicts are not out of control. The median size of payments from juries adjusted for inflation shows that payments grew from \$125,000 in 1991 to \$146,100 in 2004, an average annual increase of only 1.2 percent.

4. There has been a 56 percent decline in million dollar payouts. Again adjusted for inflation, just 1 percent of all payments exceed \$1 million. Likewise, the incidence of surgical and obstetrical payouts has not increased.

5. Cases of serious injury to patients continue. Three-quarters of payments involved major or serious injuries or death.

The in-depth and sophisticated report by *Public Citizen*, accompanied by a number of charts and graphs, demonstrates that very few cases ever go to judgment and that most doctors settle voluntarily because claims are serious and substantial. This puts to proof the lie that frivolous cases are filed. Malpractice payouts per 100,000 residents has been remarkably consistent, with a slight decline between 1991 and 2004. The chart is virtually flat. Likewise, the total value of malpractice payouts, whether inflation adjusted or unadjusted, is exquisitely stable and in all respects is far less than inflation, especially medical inflation. This is also true of verdicts.

The trend of payouts of \$1 million or more has also trended in a straight line, slightly downward, between 1991 and 2004, and as indicated, currently rests at 1 percent of payouts.

The report from *Public Citizen* also shows important trends in common malpractice categories. The incidence of three of the five most common categories of malpractice has been growing significantly. The number of payments for such things as leaving a surgical instrument behind or operating on the wrong part of the body fell from 783 in 1991 to 520 in 1997, but generally has been flat since then except for an increase in 2004 of 34 percent.

Many malpractice cases involve serious lapses. The most common incidents are involving the wrong body parts; surgical or other foreign body retained; wrong patient; wrong treatment; wrong medicine; failure to protect against infection; or wrong blood type.

Another extremely important finding of the *Public Citizen* study is that nearly 83 percent of doctors have never had a medical malpractice payout since the National Practitioner Data Bank was established in 1990. Perhaps most significantly, only 32.5 percent of doctors who made ten or more malpractice payouts were disciplined by their State Board.

This information is very consistent with data developed by the Pennsylvania Patient Safety Authority, which shows that in six (6) months there have been reports of 100,000 incidents and serious events. Approximately 5 percent of this 100,000 are serious events, which means that in a year, extrapolating the data, there would be 200,000 serious events and incidents reported in Pennsylvania. In the last year, the Pennsylvania Supreme Court reported that approximately 1,000 medical malpractice cases were filed, which means that comparing 200,000 serious events and incidents to 1,000

filed cases, only one-half of 1 percent of Pennsylvanians who suffer incidents or serious events ever file a lawsuit. Hardly a litigation explosion.

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