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Five Percent of Doctors Responsible for Half of All Medical Malpractice, Study Finds

Repeat Offender Doctors Would Get New Legal Protections for Negligence From Anti-Patient Liability Bill Scheduled for U.S. House Floor Vote Thursday

WASHINGTON, D.C. – Just 5 percent of American doctors are responsible for half the malpractice in the United States, according to a new analysis of federal data by the consumer group Public Citizen. The analysis was released as the U.S. House of Representatives is scheduled to consider legislation that would make it more difficult for injured patients to hold their doctors accountable for negligence.

The bill, H.R. 4600, comes in the wake of incorrect assertions by doctors and the business lobby that a recent spike in medical malpractice insurance premiums was caused by "excessive lawsuits." The bill would reduce doctors' liability for catastrophic injuries and would provide immunity from punitive damages for reckless conduct by HMOs, nursing homes, drug companies and medical device manufacturers.

"The medical community alleges that medical liability litigation constitutes a giant 'lottery,' in which lawsuits bear no relationship to the care given by a physician," said Public Citizen President Joan Claybrook. "In reality, a small percentage of doctors are responsible for the bulk of malpractice in the United States, and only better oversight by state medical boards, not draconian limits on patients' legal rights, can reduce the tens of thousands of deaths and injuries they cause."

Public Citizen analyzed a public use file from the National Practitioner Data Bank, which includes information about malpractice judgments and settlements since September 1990. The analysis found that 4.8 percent of doctors in the United States (40,118) who have paid two or more malpractice awards to patients are responsible for 51.1 percent of all the reports made to the Data Bank. Those doctors have paid out nearly \$21 billion in damages, more than 53 percent of the total damages paid. The analysis also found that 1.7 percent of doctors (14,293) are responsible for 27.5 percent of all malpractice awards; 14,293 have made three or more payments, totaling \$11 billion.

"Doctors are blaming lawyers and the legal system for high insurance rates," said Frank Clemente, director of Public Citizen's Congress Watch. "They should stop pointing fingers and instead look in the mirror. To achieve lower insurance premiums, they should clean up their own profession by strongly disciplining the small percentage of doctors who cause the bulk of medical negligence."

According to National Practitioner Data Bank figures, even doctors who have paid repeated malpractice claims are seldom disciplined. For instance, of the 2,100 doctors who have paid four malpractice claims, only 314 — 15 percent — have been disciplined. A Vanderbilt University study found that doctors with past records of malpractice claims can be expected to have "appreciably worse claims experience" than other doctors in future years.

Public Citizen's examination of redacted records from the National Practitioner Data Bank found numerous questionable doctors who have inflicted repeated injuries on patients yet never been disciplined. Among these doctors, who are identified only by randomly generated numbers:

- Physician Number 94358, licensed in New Jersey, settled or lost 33 medical malpractice suits involving improper diagnosis or treatment between 1988 and 1993,

inflicting more than \$400,000 in disability costs to his patients. This doctor has not been disciplined by authorities in New Jersey.

- Physician Number 64625, licensed in Pennsylvania, paid 24 medical malpractice claims involving improper performance of surgery between 1989 and 2001. Damages to this doctor's patients exceeded \$370,000. This doctor has never been disciplined by Pennsylvania authorities.
- Physician Number 125457, while licensed in Nevada, paid five malpractice claims involving improper performance of surgery between 1995 and 1997 with damages totaling \$2.3 million. Recent news accounts have reported that doctors are fleeing from Las Vegas to other states to avoid high malpractice insurance premiums. Physician 125457 was ahead of the curve in moving his practice to California. There he paid another eight malpractice claims with damages exceeding \$7.5 million. This doctor has never been disciplined by authorities in either Nevada or California.
- Physician Number 37949, licensed in Texas, settled or lost 13 medical malpractice suits involving improper treatment or improper performance of surgery between 1990 and 1997. Two of the suits involved the same allegation: a foreign body left in the patient during surgery. Damages to this doctor's patients exceeded \$2 million. This doctor has never been disciplined by authorities in Texas.

H.R. 4600 has the following significant problems: 1) It does not just let doctors off the hook for negligence, it also insulates hospitals, HMOs, nursing homes and pharmaceutical companies from some liability; 2) punitive damages are prohibited even for the most reckless conduct; 3) a cap of \$250,000 is placed on non-economic damages (awards for injuries such as lost child-bearing ability, disfigurement and paralysis), which compensate for the human suffering caused by medical negligence and defective medical products; 4) only the plaintiffs' attorneys fees are capped, which will discourage many lawyers from taking high-risk medical malpractice cases, thereby preventing many victims from obtaining legal counsel; 5) the doctrine of "joint and several liability" is abolished, which could leave injured patients with no recovery for the share of damages assigned to an uninsured, underinsured or bankrupt defendant; and 6) a "periodic payment rule" for future damages over \$100,000 is established, which would allow defendants and insurance companies to string out payments for future damages over the life expectancy of the victim, rather than have to pay up front. [Click here](#) to view the complete analysis.

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