

Solving the Malpractice Riddle: Thinking Out of the Box

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The Malpractice “Crisis”



A survey by the ACOG shows that 12.3% of its members have stopped delivering babies because of high malpractice premiums.



Newsweek, February 17, 1986

A Case Study

- Mrs. M. referred for abnormal LFTs
- Dr. K. Rx HCTZ for HBP
- Becomes ill, niece calls, Dr. S. too busy
- Calls back 1/2 hour, told to take OJ
- Calls back in 10 min., can't swallow OJ
- Told to bring aunt to ER, tries to get cousins
- 911 called
- Mrs. M. dies of anaphylactic shock

Goals of Malpractice System

- Compensation
- Deterrence
- Corrective Justice

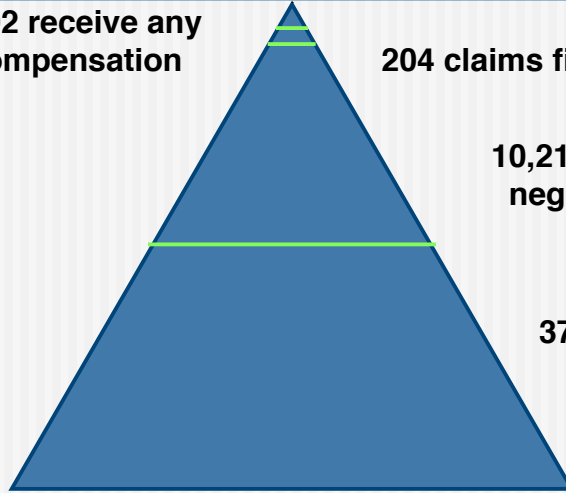
Effectiveness of Malpractice

102 receive any compensation

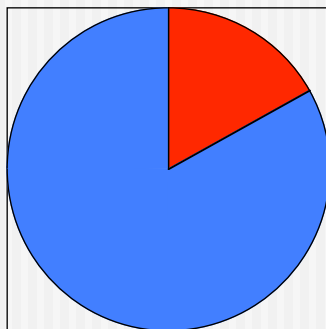
204 claims filed

10,212 due to negligence

37,000 medical injuries



Effectiveness of Malpractice



■ Negligence
■ No Negligence

- Of 100 malpractice suits filed,
- only 17 involve negligence

Effectiveness of Malpractice

- 99% of patients who have been negligently harmed receive no compensation
- 83% of physicians who are sued for malpractice have not acted negligently

Malpractice Reform

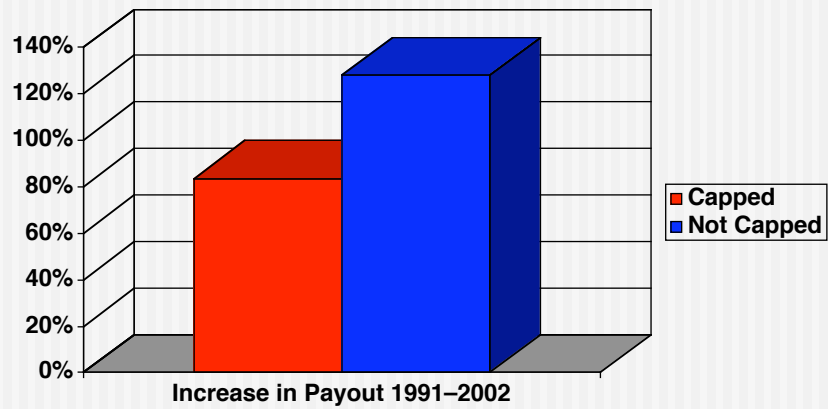
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- Cap non-economic damages at \$250,000
- Eliminate joint and several liability

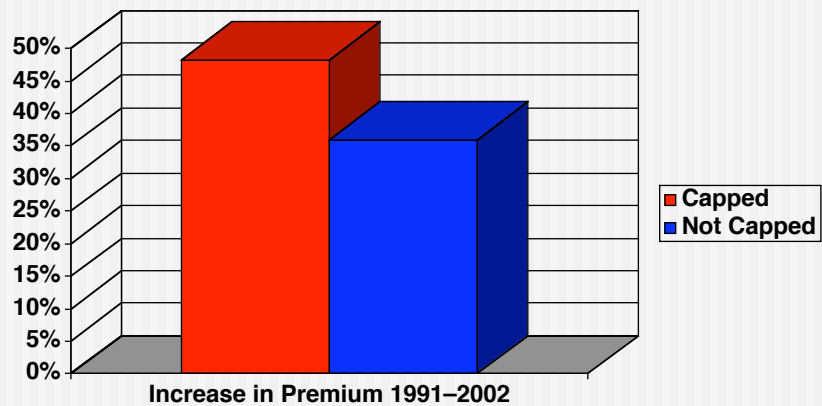
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- Require determination of merit
- Alternative Dispute Resolution Procedures
- “Three Strikes” Rule for Frivolous Lawsuits

Effectiveness of Caps



Effectiveness of Caps



Factors Driving Up Malpractice Premiums

- The medical inflation rate
- The insurance business cycle
- The need to shore up reserves
- A decline in investment income
- Financial safety
- Supply and demand

Source: Weiss MD, Gannon M, Eakins S. Medical Malpractice Caps: The impact of non-economic damage caps on physician premiums, claims payout levels, and availability of coverage. June 2003. Weiss Rating, Inc. Palm Beach Gardens, FL.

Unfairness of Caps

- Inequitable regressive impact
 - Reductions on grave injuries 7x that of minor injuries
 - Greatest reductions on pain and disfigurement (e.g., mastectomy)
- Limits access of the poor, women, and elderly to legal recourse

Source: Studdert DM, Yang YT, Mello MM. Are Damages Caps Regressive? A Study of Malpractice Jury Verdicts in California. *Health Aff* (2004) 23(4):54-67.

The No-Fault Solution

- Injured patients compensated according to a fixed award schedule
 - Treatment and rehabilitation costs
 - Loss of income
 - Lump-sum for permanent injuries
 - Support for dependents
- Claims decided by national panel with independent advice from experts

No-Fault: The Facts

- 500 claims per million inhabitants
- 40% of claims awarded compensation
- Awards made in weeks to 9 months
- Average award <\$30,000
- Administrative cost <10%
- Malpractice premium <\$1,000
- \$29 million annually in New Zealand

Source: Bismark, Marie and Ron Paterson. No-Fault Compensation In New Zealand: Harmonizing Injury Compensation, Provider Accountability, And Patient Safety. *Health Aff* (2006) 25(1):278–83.

Advantages of No-Fault

- Efficient (low administrative cost)
- Effective (more injured patients compensated)
- Equitable (those with similar injuries receive similar compensation)
- Affordable (40% less expensive)
- Accountable (less blame, less secrecy)