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## **MEDIA ALERT**

### **Doctors, Insurance Lobby Perpetuating Misleading Stories about Medical Malpractice Liability Premiums**

This week's walkout by surgeons at several West Virginia hospitals has led to a spate of news stories about the high costs of medical malpractice liability insurance. But many journalists have neglected to tell the consumer side of the story and have wrongly accepted the insurance and medical lobbies' assertions about the cause of rising premiums as fact. The claim that the tort system is fueling a crisis in malpractice premiums is fictitious. Journalists should view these claims with skepticism and consider the other side of the story:

- The medical system is indeed in crisis, but not because of the civil justice system. The Institute of Medicine in 1999 found that from 44,000 to 98,000 people die in hospitals each year due to preventable medical errors – more than the deaths caused by motor vehicle accidents, breast cancer or AIDS. The cost to society in terms of disability and health care costs, lost income, lost household production and the personal costs of care: \$17 billion to \$29 billion.
- Very few medical errors ever result in legal claims. The groundbreaking Harvard Medical Malpractice study found that only one malpractice claim is made for every 7.6 hospital injuries. A recent Public Citizen analysis of Florida data found a similar result – just one in six hospital errors resulted in a claim.
- There is no explosion in medical malpractice payouts. An Oct. 10 report by Americans for Insurance Reform (AIR) and prepared by Robert Hunter, one of the nation's most knowledgeable insurance actuaries, found that the amount paid by insurance companies in jury awards, settlements and defense costs over the past 30 years has remained extremely stable and directly tracks the rate of medical inflation.
- Malpractice insurance premiums are rising not because of the tort system but because of the economic cycle. The AIR report also showed that since 1975, premiums have increased or decreased in direct relationship to the strength or weakness of the economy. When the

economy is booming and investment returns are high, companies maintain premiums at modest levels, and when the economy falters and interest rates fall, they increase premiums in response to declining investment returns.

- Other insurance and health costs are increasing too. Double-digit increases in insurance premiums began in 2000 and are occurring in many insurance products, not just for medical malpractice. Plus, health care costs are increasing 12.7 percent a year, according to a new study by the Kaiser Family Foundation. Rising health care costs are the main component in increases in damage awards.
- There is no reason to believe that limiting the ability of injured patients to recover losses will significantly lower premiums for doctors. In California, which capped jury awards, rates averaged \$7,201 in 2000, compared to \$7,844 nationally – just an 8 percent difference. Between 1991 and 2000, premiums rose by just 0.2 percent nationally and by 0.4 percent in California, according to the AIR study.
- One of the major causes of the problem is medical negligence and incompetence. State medical boards should do a better job of weeding out bad doctors. A Public Citizen analysis of data from the National Practitioner Data Bank found that just 5 percent of U.S. doctors are responsible for half of all malpractice and slightly more than half of all damages paid. But even doctors who pay repeated malpractice claims are seldom disciplined. For example, of the 2,100 doctors who have paid four malpractice claims, only 314, or 15 percent, have been disciplined.

#### **Facts about West Virginia:**

- As in the rest of the country, a relatively few doctors cause most of the claims. In West Virginia, 10 percent of doctors are responsible for 58 percent of malpractice.
- The economic cycle plays a significant role in rate increases. Investment gain by insurers, which is critical to the success of writing medical malpractice insurance, fell from 24.2 percent in 2000 to 15.7 percent in 2001, according to data from the West Virginia insurance commissioner's office.
- The amount of legal fees paid by West Virginia insurers to fight claims far exceeded the amount paid nationwide. Insurers there paid nearly 47 cents of every premium dollar earned to defend doctors; the nationwide figure was 26 cents.

In conclusion, the civil justice system is *not* the problem. Better solutions are to either wait out the business cycle or reform the practices of the insurance industry and implement numerous reforms to reduce the amount of malpractice by a relatively small number of doctors. Destroying the ability of injured patients to recover losses incurred at the hands of medical professionals will only lead to less accountability for doctors and more risk for patients.

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