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MYTHBUSTER!

THE TRUTH ABOUT MEDICAL MALPRACTICE LITIGATION

CONTRARY TO POPULAR MYTH, FEW INJURED PATIENTS FILE LAWSUITS.

- In 1999, the Institute of Medicine (IOM) concluded that between 44,000 and 98,000 Americans die each year (and 300,000 are injured) due to avoidable medical errors in hospitals alone. Yet eight times as many patients are injured as ever file a claim; 16 times as many suffer injuries as receive any compensation.[1] Recent studies have discovered even higher death rates. For example, in 2004, hospital rating company HealthGrades examined national Medicare data and reported that IOM's finding of 98,000 preventable deaths was too low and that a figure of 195,000 annual deaths was more accurate.[2] Similarly, in 2009, a Hearst Newspapers national investigation concluded that the number of fatalities from avoidable medical injuries approaches 200,000 per year in the United States.[3]

- At the highest level, the estimated number of medical injuries (in hospitals and otherwise) is more than one million per year; yet approximately 85,000 malpractice suits are filed annually. "With about ten times as many injuries as malpractice claims, the only conclusion possible is that injured patients rarely file lawsuits."[4]

MEDICAL MALPRACTICE CASES REPRESENT A SMALL NUMBER OF CIVIL CASES CONCLUDED BY TRIAL EACH YEAR.

- In 2005, the most recent year studied by the U.S. Department of Justice (DOJ), medical malpractice cases accounted for only 9.1 percent of all civil cases disposed of by trial in state courts.[5]

- After examining long-term data, the DOJ found that the number of medical malpractice cases in the nation's 75 most populous counties remained low and relatively steady over a 14-year period, with med mal cases constituting 9.7 percent of all civil trials in 2001 and 11.3 percent of all civil trials in 2005.[6]

MEDICAL MALPRACTICE CASES REPRESENT A SMALL NUMBER OF TORT CASES CONCLUDED BY TRIAL EACH YEAR.

- DOJ data show that in 2005 medical malpractice cases accounted for 14.9 percent of tort cases disposed of by trial in state courts nationwide.[7]

- Long-term data from the nation's 75 most populous counties show that the number of medical malpractice cases remained low and fairly stable from 1996 through 2005, increasing by only 1.5 percent over a ten-year period.[8]

THE VAST MAJORITY OF TRUE MEDICAL MALPRACTICE CASES SETTLE.

- In a 2006 closed claims study, the Harvard School of Public Health found that only fifteen percent of claims were decided by trial verdict.[9] Other research shows that 90 percent of cases are settled without jury trial, with some estimates indicating that the figure is as high as 97 percent.[10]

- As Duke Law Professor Neil Vidmar, who has extensively studied medical malpractice litigation, testified before the U.S. Senate, "Research on why insurers actually settle cases indicates that the driving force in most instances is whether the insurance company and their lawyers conclude, on the basis of their own internal review, that the medical provider was negligent.….An earlier study by Rosenblatt and Hurst examined 54 obstetric malpractice claims for negligence. For cases in which settlement payments were made there was general consensus among insurance company staff, medical experts and defense attorneys that some lapse in the standard of care had occurred. No payments were made in the cases in which these various reviewers decided there was no lapse in the standard of care."[11]

  Vidmar added, "In interviews with liability insurers that I undertook in North Carolina and other states, the most consistent theme from them was: 'We do not settle frivolous cases!' The insurers indicated that there are minor exceptions, but their policy on frivolous cases was based on the belief that if they ever begin to settle cases just to make them go away, their credibility will be destroyed and this will encourage more litigation."[12]

  Vidmar further testified, "Without question the threat of a jury trial is what forces parties to settle cases. The presence of the jury as an ultimate arbiter provides the incentive to settle but the effects are more subtle than just negotiating around a figure. The threat causes defense lawyers and the liability insurers to focus on the acts that led to the claims of negligence."[13]

JURIES ARE COMPETENT AND ABLE TO HANDLE MEDICAL MALPRACTICE CASES.

- Empirical studies consistently show juries to be capable, effective and fair decision-makers who can weigh complex cases.[14] For example, University of Missouri-Columbia Law Professor Philip G. Peters, Jr. analyzed three decades of empirical research on jury decision-making and reached the following four conclusions: "First, negligence matters. Weak cases rarely win, close cases do better, and cases with strong evidence of medical negligence fare best. Second, the agreement rate between juries and experts is very high in the class of cases that most worries critics of malpractice litigation, that is, cases with weak evidence of negligence. Juries agree with expert reviewers in eighty to ninety percent of these cases. That is a better agreement rate than physicians typically have with each other. Third, the agreement rate is much lower in cases with strong evidence of negligence. Doctors consistently win about fifty percent of the cases that experts believe the plaintiffs should win. Fourth, the consistently low success rate of malpractice plaintiffs in cases that expert reviewers feel they should win strongly suggests the presence of one or more factors that systematically favor medical defendants in the courtroom, such as better litigation teams or pronounced jury reluctance to find doctors liable. From the perspective of defendants at least, jury performance is remarkably good."[15]

CONTRARY TO POPULAR NOTIONS, IT IS DIFFICULT FOR PATIENTS TO WIN MEDICAL MALPRACTICE CASES.

- In 2005, the latest year studied by the DOJ, patients prevailed in 22.7 percent of medical malpractice trials.[16]

- Patients won before judges 50 percent of the time, while only winning 22.7 percent of cases before juries.[17]

- After examining long-term data from the nation's 75 most populous counties, the DOJ found statistically significant decreases in win rates among medical malpractice plaintiffs. More specifically, the percentage of successful plaintiffs declined by 17 percent from 1996 to 2005 and by 27.7 percent from 2001 to 2005.[18]

- According to the Harvard School of Public Health, patients "rarely won damages at trial, prevailing in only 21 percent of verdicts as compared with 61 percent of claims resolved out of court."[19]

- Interviews with North Carolina jurors who decided medical malpractice cases led Duke Law Professor Neil Vidmar to conclude that "many jurors initially viewed the plaintiffs' claims with great skepticism. Their attitudes were expressed in two main themes. First, they said that too many people want to get something for nothing, a skeptical attitude about claiming… . Second, they expressed the belief that most doctors try to do a good job and should not be blamed for a simple human misjudgment."[20] Vidmar added, "Indeed, these attitudes were even expressed in some of the cases in which jurors decided for the plaintiff. One jury that gave a multimillion-dollar award for a baby with severe brain injuries was very concerned about the possible adverse effect on the doctor's medical practice. This does not mean that in every such case jurors held these views. Sometimes, evidence of the doctor's seemingly careless behavior caused jurors to be angry about what happened. However, even in these latter cases, the interviews indicated that the jurors had initially approached the case with open minds."[21]

PLAINTIFFS WHO HAVE ESTABLISHED LIABILITY AT TRIAL RARELY RECEIVE PUNITIVE DAMAGES.

- According to the DOJ, only 6 medical malpractice plaintiff winners were awarded punitive damages in 2005.[22]

- Long-term data from the nation's 75 most populous counties show that the percentage of medical malpractice trials in which the plaintiff winner received punitive damages fell by 46.1 percent from 2001 to 2005.[23]

MEDICAL MALPRACTICE VERDICTS ARE FAR SMALLER THAN COMMONLY BELIEVED.

- In 2005, the latest year studied by the DOJ, the median jury award in state medical malpractice cases was $400,000.[24] In contrast, state judges handed down a significantly higher median damage award to medical malpractice victims, $631,000.[25] It is important to note that these median amounts do not account for post-trial activity (such as award modifications) and appeals.[26]

COMPENSATION FOR MEDICAL MALPRACTICE IS LESS FREQUENT THAN COMMONLY BELIEVED.

- According to Public Citizen's most recent analysis of National Practitioner Data Bank (NPDB) data, in 2009, "[t]he number of malpractice payments made on behalf of doctors fell for the sixth straight year in 2009, setting another all-time low through the history of the NPDB. In absolute terms, payments in 2009 were 19.6 percent fewer than in 1991, the first full year in which the NPDB tracked the data. Compared to the U.S. population, the number of payments was 33.9 percent lower in 2009 than in 1991."[27]

- Also according to Public Citizen's most recent analysis of National Practitioner Data Bank (NPDB) data, in 2009, there were 3,537 medical malpractice payments for deaths due to negligence. This means that even if one uses the low end of the IOM estimate, about 12 times as many people were likely killed in hospitals in 2009 because of avoidable errors as the number of malpractice payments to survivors. Using the Hearst estimate, just one in 57 deaths was compensated. In other words, between 83 and 98 percent of deaths from medical negligence did not result in any liability payment.

- Also according to Public Citizen's most recent analysis of National Practitioner Data Bank (NPDB) data, in 2009, a total of 10,772 malpractice payments were made on behalf of doctors in 2009. Thus, even by the IOM's low-end estimate – 44,000 deaths a year – about four times as many people were killed by avoidable errors as received a medical malpractice payment for any adverse outcome, including death. Using the Hearst estimate, about 19 people were killed for every payment compensating any type of injury.

- These figures underscore what experts have said for years: doctors and hospitals, through their liability insurers, compensate victims for only a small fraction of medical errors that cause serious injuries or deaths. Most victims of malpractice do not sue and receive nothing outside the legal system. Meanwhile, errors continue unchecked.[28]

- A DOJ report on medical malpractice insurance claims in seven states between 2000 and 2004 found that most medical malpractice claims were closed without any compensation provided to those claiming a medical injury.[29]

MEDICAL MALPRACTICE VERDICT PAYMENTS ARE FAR SMALLER THAN COMMONLY BELIEVED.

- In its 2010 study of NPDB data, Public Citizen found that the average value of medical malpractice payments dropped in 2009 for the second straight year.[30] In addition, "[t]he cumulative value of malpractice payments in 2009 was the lowest since 1999 in actual (unadjusted) dollars. If adjusted for inflation, payments were either the lowest or the second lowest on record, depending on the method of adjustment."[31] Moreover, between 2000 and 2009, health care spending skyrocketed by 83 percent while medical malpractice payments fell 8 percent.[32]

- As Cornell Law Professor Valerie P. Hans and Duke Law Professor Neil Vidmar explain in *American Juries: The Verdict*, "[t]he fact that the jury verdict is not the end of litigation is often overlooked in discussions of the role of the jury. This is especially true of medical malpractice trials."[33] According to the authors, "[r]esearch consistently indicates that outlier verdicts seldom withstand postverdict proceedings. The judge may reduce the award by *remittitur* (the legal term for a reduction), or the case may be appealed to a higher court at which time the award may be reduced. Perhaps most common of all, the plaintiff and the defendant negotiate a posttrial settlement that is less than the jury verdict. Plaintiffs are willing to negotiate lesser amounts," the researchers added, "because they need the money immediately and cannot wait for the years it will take to get the money if the case is appealed. Also, there is a risk that an appeals court will reduce the award or even overturn the verdict."[34] In the end, the plaintiff "negotiates a settlement around the defendant's insurance coverage."[35]

  For example, "[s]ome of the largest medical malpractice awards in New York that made national headlines ultimately resulted in settlements between 5 and 10 percent of the original jury verdict actually being paid."[36] Similarly, "Vidmar's Illinois study found that settlements in his sample of large jury awards averaged only 43 percent of the original verdicts."[37]

- Research by University of Illinois Law Professor David A. Hyman and colleagues from the University of Texas, New York University Law School and Georgetown University Law Center shows that most med mal jury awards receive post-verdict "haircuts."[38] According to the Texas data:

  - "Seventy-five percent of plaintiffs received a payout less than the adjusted verdict (jury verdict plus pre-judgment and post-judgment interest), 20 percent received the adjusted verdict (within ± 2 percent), and 5 percent received more than the adjusted verdict."[39]

  - "Overall, plaintiffs received a mean (median) per-case haircut of 29 percent (19 percent), and an aggregate haircut of 56 percent, relative to the adjusted verdict."[40]

  - "The larger the verdict, the more likely and larger the haircut. For cases with a positive adjusted verdict under $100,000, 47 percent of plaintiffs received a haircut, with a mean (median) per-case haircut of 8 percent (2 percent). For cases with an adjusted verdict larger than $2.5 million, 98 percent of plaintiffs received a haircut with a mean (median) per-case haircut of 56 percent (61 percent)."[41]

  - "Insurance policy limits are the most important factor explaining haircuts."[42]

  - "Most cases settle, presumably in the shadow of the outcome if the case were to be tried. That outcome is not the jury award, but the actual post-verdict payout. … The parties surely bargain in the shadow of the jury, but in most cases, the terms of the bargain are shaped by the shadow of coverage."[43]

  - "Because defendants rarely pay what juries award, jury verdicts alone do not provide a sufficient basis for claims about the performance of the tort system."[44]

MEDICAL MALPRACTICE VERDICT PAYMENTS COMPENSATE FOR SERIOUS INJURIES.

- Public Citizen's analysis of NPDB statistics shows that patients do not win large jury awards for insignificant claims and that payments usually correspond with injury severity. "Of the 10,772 medical malpractice payments in 2009, nearly two-thirds (64.5 percent) compensated for negligence that resulted in 'significant permanent injury;' 'major permanent injury;' quadriplegia, brain damage or the need for lifelong care; or death. More important, the dollar value of payments for these serious injuries accounted for an even higher proportion – more than four-fifths (82.2 percent) of the total value of malpractice payments last year."[45]

- As Professor Vidmar told Congress in June 2006, "the magnitude of jury awards in medical malpractice tort cases positively correlated with the severity of the plaintiffs' injuries, except that injuries resulting in death tended to result in awards substantially lower than injuries resulting in severe permanent injury, such as quadriplegia. I and two colleagues conducted a study of malpractice verdicts in New York, Florida, and California. We also found that jury awards of prevailing plaintiffs in malpractice cases were correlated with the severity of the injury."[46]

MEDICAL ERRORS COST OUR NATION BILLIONS OF DOLLARS ANNUALLY.

- In its recent NPDB report, Public Citizen explained that "the IOM concluded in 1999 that avoidable errors cost between $17 billion and $29 billion a year, and that figure doubtless would be much higher today. But even the lower of those figures is 59 percent higher than the sum of all doctors' and hospitals' malpractice insurance payments combined in 2008 (the most recent year available). A 2009 Public Citizen analysis of peer-reviewed studies found that implementing just 10 basic patient

safety measures to protect patients would save $35 billion annually. This is 227 percent higher than all medical malpractice liability insurance payments."[47]

TOTAL MEDICAL MALPRACTICE LITIGATION COSTS REMAIN A TINY PERCENTAGE OF OVERALL HEALTH CARE COSTS IN THIS COUNTRY.

- Public Citizen's 2010 study of NPDB data shows:
    - "Medical malpractice litigation's share of overall health care costs fell to less than 0.5 percent of one percent, even when defined generously as total liability insurance payments by doctors and hospitals. This figure encompasses not just litigation defense costs and payments to victims, but also liability insurers' profits and administrative costs."[48]
    - "Medical malpractice payments to victims fell to 0.14 percent of total U.S. health care costs, the lowest level on record."[49]
- In 2009, the Congressional Budget Office found that even if the country enacted an entire menu of extreme tort restrictions (*e.g.*, a $250,000 cap on non-economic damages, repeal of the collateral source rule, one-year date of discovery statute of limitations with 3 years for children and repeal of joint and several liability), it can go no farther than to find an extremely small percentage of health care savings, about one-half of 1 percent each year or $11 billion at the current level.[50] To put this in perspective, it totals about what Americans spend annually on dog and cat food.[51]

FAR FROM BEING "BROKEN," THE CURRENT MEDICAL MALPRACTICE SYSTEM WORKS WELL.

- In its 2006 closed claims study, the Harvard School of Public Health reported that legitimate claims are being paid, non-legitimate claims are generally not being paid and "portraits of a malpractice system that is stricken with frivolous litigation are overblown."[52] Among the researchers' more significant findings:
    - Sixty-three percent of the injuries were judged to be the result of error and most of those claims received compensation; on the other hand, most individuals whose claims did not involve errors or injuries received nothing.[53]
    - Eighty percent of claims involved injuries that caused significant or major disability or death.[54]
    - "The profile of non-error claims we observed does not square with the notion of opportunistic trial lawyers pursuing questionable lawsuits in circumstances in which their chances of winning are reasonable and prospective returns in the event of a win are high. Rather, our findings underscore how difficult it may be for plaintiffs and their attorneys to discern what has happened before the initiation of a claim and the acquisition of knowledge that comes from the investigations, consultation with experts, and sharing of information that litigation triggers."[55]
    - **"**[D]isputing and paying for errors account for the lion's share of malpractice costs."[56]
    - **"**Previous research has established that the great majority of patients who sustain a medical injury as a result of negligence do not sue. … [F]ailure to pay claims involving error adds to a larger phenomenon of underpayment generated by the vast number of negligent injuries that never surface as claims."[57]

LITIGATION IMPROVES PATIENT SAFETY.

- In a breakthrough article by George J. Annas, J.D., M.P.H., the *New England Journal of Medicine* confirmed that litigation against hospitals improves the quality of care for patients. The author wrote, "In the absence of a comprehensive social insurance system, the patient's right to safety can be enforced only by a legal claim against the hospital. … [M]ore liability suits against hospitals may be necessary to motivate hospital boards to take patient safety more seriously.… Anesthesiologists were motivated by litigation to improve patient safety. As a result, this profession implemented 25-years-ago a program to make anesthesia safer for patients and as a result, the risk of death from anesthesia dropped from 1 in 5000 to about 1 in 250,000."[58]

FEAR OF LITIGATION IS NOT THE MAIN REASON DOCTORS DO NOT REPORT ERRORS.

- According to a 2006 study by Dr. Thomas Gallagher, a University of Washington internal-medicine physician and co-author of two studies published in the *Archives of Internal Medicine*, "Comparisons of how Canadian and U.S. doctors disclose mistakes point to a 'culture of medicine,' not lawyers, for their behavior."[59] In Canada, there are no juries, non-economic awards are severely capped and "if patients lose their lawsuits, they have to pay the doctors' legal bills…yet doctors are just as reluctant to fess up to mistakes."[60] Moreover, "doctors' thoughts on how likely they were to be sued didn't affect their decisions to disclose errors." The authors believed "the main culprit is a 'culture of medicine,' which starts in medical school and instills a 'culture of perfectionism' that doesn't train doctors to talk about mistakes."[61]

- Research by George J. Annas, J.D., M.P.H. "found that only one quarter of doctors disclosed errors to their patients,"[62] but "the result was not that much different in New Zealand, a country that has had no-fault malpractice insurance"[63] (*i.e.*, no litigation against doctors) for decades. In other words, "[t]here are many reasons why physicians do not report errors, including a general reluctance to communicate with patients and a fear of disciplinary action or a loss of position or privileges."[64]

THE BEST WAY TO REDUCE MALPRACTICE LITIGATION IS TO REDUCE THE AMOUNT OF MALPRACTICE.

- As the Rand Institute for Civil Justice found in its 2010 study of California malpractice:

    - "Our results showed a highly significant correlation between the frequency of adverse events and malpractice claims: On average, a county that shows a decrease of 10 adverse events in a given year would also see a decrease of 3.7 malpractice claims. Likewise, a county that shows an increase of 10 adverse events in a given year would also see, on average, an increase of 3.7 malpractice claims. According to the statistical analysis, nearly three-fourths of the within-county variation in annual malpractice claims could be accounted for by the changes in patient safety outcomes."[65]

    - "We also found that the correlation held true when we conducted similar analyses for medical specialties—specifically, surgeons, nonsurgical physicians, and obstetrician/gynecologists (OB-GYNs). Nearly two-thirds of the variation in malpractice claiming against surgeons and nonsurgeons can be explained by changes in safety. The association is weaker for OB-GYNs, but still significant."[66]

    - "These findings are consistent with the basic hypothesis that iatrogenic harms are a precursor to malpractice claims, such that modifying the frequency of medical injuries has an impact on the volume of litigation that spills out of them. Although this is an intuitive relationship, it is not one that has been well validated previously. It suggests

that safety interventions that improve patient outcomes have the potential to reduce malpractice claiming, and in turn, malpractice pressure on providers."[67]

- "[N]ew safety interventions potentially can have positive effects on the volume of malpractice litigation — a desirable result to seek out, even beyond the immediate impact of medical injuries avoided."[68]

- "Presumably, the one thing that all parties to the debate can agree on is that reducing malpractice activity by reducing the number of iatrogenic injuries is a good idea. Arguments about the merits of statutory tort intervention will surely continue in the future, but to the extent that improved safety performance can be shown to have a demonstrable impact on malpractice claims, that offers another focal point for policymakers in seeking to address the malpractice crisis. Based on the results of the current study, we would suggest that that focal point may be more immediately relevant than has previously been recognized."[69]

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NOTES

[1] National Academy of Sciences, Institute of Medicine, *To Err is Human* (1999); Harvard Medical Practice Study (1990).

[2] HealthGrades press release, "In-Hospital Deaths From Medical Errors At 195,000 Per Year, HealthGrades Study Finds," July 27, 2004, found at www.healthgrades.com/media/DMS/pdf/InhosptialDeathsPatientSafetyPressRelease072704.pdf. *See also*, Testimony of Neil Vidmar, Russell M. Robinson II Professor of Law, Duke Law School, before the U.S. Senate Committee on Health, Education, Labor and Pensions, Hearing on "Medical Liability: New Ideas for Making the System Work Better for Patients," June 22, 2006 at 5.

[3] "Dead By Mistake," *Hearst Newspapers*, found at http://www.chron.com/deadbymistake/.

[4] David A. Hyman and Charles Silver, "Medical Malpractice Litigation and Tort Reform: It's the Incentives, Stupid," *59 Vand. L. Rev.* 1085, 1089 (May 2006) (citing Brian Ostrom, Neal Kauder & Robert LaFountain, *Examining the Work of State Courts, 2003* at 23).

[5] U.S. Department of Justice, Bureau of Justice Statistics, "Civil Bench and Jury Trials in State Courts, 2005," NCJ 223851 at 2 (Table 2) (October 2008) (revised April 9, 2009), found at http://www.prisonpolicy.org/scans/bjs/cbjtsc05.pdf.

[6] *Id.* at 8, 9 (Table 10).

[7] U.S. Department of Justice, Bureau of Justice Statistics, "Tort Bench and Jury Trials in State Courts, 2005," NCJ 228129 (November 2009) at 2 (Table 1), found at http://bjs.ojp.usdoj.gov/content/pub/pdf/tbjtsc05.pdf.

[8] *Id*. at 12 (Table 12).

[9] David M. Studdert et al., "Claims, Errors, and Compensation Payments in Medical Malpractice Litigation," 354 *N Engl J Med* 2024, 2026 (2006), found at http://www.hsph.harvard.edu/faculty/michelle-mello/files/litigation.pdf.

[10] Testimony of Neil Vidmar, *supra* n.2, at 17. (citations omitted).

[11] *Id*. at 17-18, 22.

[12] *Id*. at 23.

[13] *Id.* at 21.

[14] For an extensive list of studies demonstrating the competence of juries, *see, e.g.,* Testimony of Neil Vidmar, *supra* n.2, at 10 ("The overwhelming number of the judges gave the civil jury high marks for competence, diligence, and seriousness, even in complex cases …Systematic studies of jury responses to experts lead to the conclusion that jurors do not automatically defer to experts and that jurors have a basic understanding of the evidence in malpractice and other cases. Jurors understand that the adversary system produces experts espousing opinions consistent with the side that called them to testify. Moreover, jurors carefully scrutinize and compare the testimony of opposing experts. They make their decisions through collective discussions about the evidence.… We also found that jury awards of prevailing plaintiffs in malpractice cases were correlated with the severity of the injury.") (citations omitted). *See also*, Marc Galanter, "Real World Torts: An Antidote to Anecdote," 55 *Md. L. Rev.* 1093, 1109, n. 45 (1996), citing Michael J. Saks, *Small-Group Decision Making and Complex Information Tasks* (1981); Robert MacCoun, "Inside the Black Box: What Empirical Research Tells Us About Decisionmaking by Civil Juries," in *Verdict: Assessing the Civil Jury System* 137 (Brookings Institution, Robert E. Litan ed., 1993); Christy A. Visher, "Juror Decision Making: The Importance of Evidence," 11 *Law & Hum. Behav*. 1 (1987); Richard O. Lempert, "Civil Juries and Complex Cases: Let's Not Rush to Judgment," 80 *Mich. L. Rev*. 68 (1981).

[15] Philip G. Peters, Jr., "Doctors & Juries," 105 *U. Mich. L. Rev*. 1453, 1454 (May 2007), found at http://www.michiganlawreview.org/assets/pdfs/105/7/peters.pdf.

[16] "Tort Bench and Jury Trials in State Courts, 2005," *supra* n.7, at 4 (Table 4).

[17] *Ibid*.

[18] *Id*. at 12 (Table 12).

[19] "Claims, Errors, and Compensation Payments in Medical Malpractice Litigation," *supra* n.9, at 2026.

[20] Valerie P. Hans and Neil Vidmar, *American Juries: The Verdict.* Amherst, NY: Prometheus Books (2007) at 331.

[21] *Ibid*.

[22] "Tort Bench and Jury Trials in State Courts, 2005," *supra* n.7, at 7 (Table 6).

[23] *Id.* at 12 (Table 12).

[24] *Id.* at 5 (Table 5).

[25] *Ibid*.

[26] *Ibid*.

[27] Public Citizen's Congress Watch, *Medical Malpractice Payments Fall Again in 2009* (March 2010), at 3, found at http://www.citizen.org/documents/NPDBFinal.pdf. (This report analyzes data in the National Practitioner Data Bank released March 1, 2010.)

[28] *Id*. at 1-2.

[29] U.S. Department of Justice, Bureau of Justice Statistics, "Medical Malpractice Insurance Claims in Seven States," 2000-2004," NCJ 216339 (March 2007) at 1, found at http://bjs.ojp.usdoj.gov/content/pub/pdf/mmicss04.pdf.

[30] *Medical Malpractice Payments Fall Again in 2009*, *supra* n.27, at 4.

[31] *Id.* at 1.

[32] *Ibid*.

[33] *American Juries*, *supra* n.20, at 333.

[34] *Id.* at 334-335.

[35] *Id.* at 335.

[36] *Ibid*.

[37] *Ibid*.

[38] David A. Hyman et al., "Do Defendants Pay What Juries Award? Post-Verdict Haircuts in Texas Medical Malpractice Cases, 1988–2003," 4 *Journal of Empirical Legal Studies* 3 (March 2007), found at http://papers.ssrn.com/sol3/papers.cfm?abstract_id=914415.

[39] *Id.* at 3-4.

[40] *Id.* at 4.

[41] *Ibid*.

[42] *Ibid*.

[43] *Id*. at 4, 59.

[44] *Id*. at 4.

[45] *Medical Malpractice Payments Fall Again in* 2009, *supra* n.27, at 7.

[46] Testimony of Neil Vidmar, *supra* n.2, at 10.

[47] *Medical Malpractice Payments Fall Again in* 2009, *supra* n.27, at 2.

[48] *Id.* at 1.

[49] *Ibid.*

[50] Alexander C. Hart, "Medical malpractice reform savings would be small, report says," *Los Angeles Times*, October 10, 2009; http://www.latimes.com/news/nationworld/nation/la-na-malpractice10-2009oct10,0,4877440.story.

[51] Pet Food Institute, "U.S. Pet Food Sales," found at http://www.petfoodinstitute.org/Index.cfm?Page=USPetFoodSales.

[52] "Claims, Errors, and Compensation Payments in Medical Malpractice Litigation," *supra* n.9, at 2025, 2031.

[53] *Id*. at 2027-2028.

[54] *Id*. at 2026.

[55] *Id*. at 2030-2031.

[56] *Id*. at 2031.

[57] *Id*. at 2025, 2031.

[58] George J. Annas, J.D., M.P.H., "The Patient's Right to Safety – Improving the Quality of Care through Litigation against Hospitals," *New England Journal of Medicine*, May 11, 2006.

[59] Carol M. Ostrom, "Lawsuit fears aren't reason for docs' silence, studies say," *Seattle Times*, August 17, 2006, found at http://seattletimes.nwsource.com/html/health/2003204605_apologies17m.html (citing from Thomas Gallagher, M.D. et al, "Choosing your Words Carefully: How Physicians Would Disclose Harmful Medical Errors to Patients," *Archives of Internal Medicine,* August 14, 2006).

[60] *Ibid*.

[61] *Ibid*.

[62] "The Patient's Right to Safety – Improving the Quality of Care through Litigation against Hospitals," *supra* n.58.

[63] *Ibid*.

[64] *Ibid*.

[65] Michael D. Greenberg et al., *Is Better Patient Safety Associated with Less Malpractice Activity? Evidence from California*, Rand Corporation (2010) at x, found at http://rand.org/pubs/technical_reports/2010/RAND_TR824.

[66] *Ibid*.

[67] *Id*. at 15.

[68] *Id*. at 15-16.

[69] *Id*. at 19.