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## NEWS BACKGROUNDER

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### RECENT POLITICAL ADS CONTAIN MAJOR FALSEHOODS ABOUT DOCTOR/HOSPITAL AVAILABILITY DUE TO MALPRACTICE

Some political ads have started to air with blatantly false reports about the exodus of doctors and hospital closings due to medical malpractice lawsuits. These spots also support the widely-discredited notion that limiting lawsuits will bring down doctors' insurance rates, as repeated studies - and actual experience - show that the cause and solutions to those problems lie with the insurance industry, not the legal system.

#### STUDIES REJECT THE NOTION THAT DOCTORS ARE FLEEING

- The U.S. General Accounting Office (GAO) found that doctors' groups have misled, fabricated evidence, or, at the very least, wildly overstated their case about how medical malpractice problems have limited access to health care. *Analysis of Medical Malpractice: Implications of Rising Premiums on Access to Health Care*, General Accounting Office, GAO-03-836, 2003 (pp.12-24)
- The health care access problems that GAO could confirm were isolated and the result of numerous factors having nothing at all to do with the legal system. Specifically, GAO found that these pockets of problems "were limited to scattered, often rural, locations and in most cases providers identified long-standing factors in addition to malpractice pressures that affected the availability of services." (p. 13) For example:
  - In Florida, GAO found, "Reports of physician departures in Florida were anecdotal, not extensive, and in some cases ... inaccurate." (p. 17). "Hospital association representatives reported that access to newborn delivery services in Florida had been reduced due to the closures of five hospital obstetrics units. However, [GAO] contacted each of these hospitals and determined that ... demand for [each] now closed obstetrics facility had been low and that nearby facilities provided obstetrics services." (p. 16)
  - "In Nevada, 34 OB/GYNs reported leaving, closing practices, or retiring due to malpractice concerns; however, confirmatory surveys conducted by the Nevada State Board of Medical Examiners found nearly one-third of these reports were inaccurate... Random calls [GAO] made to 30 OB/GYN practices in Clark County found that 28 were accepting new patients with wait-times for an appointment of 3 weeks or less." (p. 18)

- “In Pennsylvania, despite reports of physician departures, the number of physicians per capita in the state has increased slightly during the past 6 years.....” (p. 18)
- “In West Virginia, although access problems reportedly developed because two hospital obstetrics units closed due to malpractice pressures, officials at both of these hospitals told [GAO] that a variety of factors, including low service volume and physician departures unrelated to malpractice, contributed to the decisions to close these units. One of the hospitals has recently reopened its obstetrics unit.” (p.16-17).
- An August 2004 study by the National Bureau of Economic Research [NBER] found: “The fact that we see very little evidence of widespread physician exodus or dramatic increases in the use of defensive medicine in response to increases in state malpractice premiums places the more dire predictions of malpractice alarmists in doubt. The arguments that state tort reforms will avert local physician shortages or lead to greater efficiencies in care are not supported by our findings.” Katherine Baicker & Amitabh Chandra, NATIONAL BUREAU OF ECONOMIC RESEARCH, *The Effect of Malpractice Liability on the Delivery of Health Care* (Aug. 2004), p. 20.
- Local news stories have reached similar conclusions. For example, in Illinois, “Tales of doctors fleeing Illinois to escape soaring malpractice insurance costs have captured media attention and fueled the push for limits on jury awards, but the numbers tell a different story. Overall, the number of doctors in Illinois is rising, according to data from the state agency that licenses physicians.” Bob Tita, “More docs in Illinois; Numbers don't bear out idea of fleeing physicians, *Crains Chicago Business*, July 05, 2004.

## **STUDIES REJECT THE NOTION THAT LAWSUIT LIMITS WILL LOWER INSURANCE RATES.**

- **Weiss Ratings**, an independent insurance-rating agency, found that between 1991 and 2002, states with caps on noneconomic damage awards saw median doctors’ malpractice insurance premiums rise 48 percent – *a greater increase than in states without caps*. In states without caps, median premiums increased only 36 percent. Weiss speculated that state regulation of insurance premium increases made the difference. Jyoti Thottam, “He Sets Your Doctor's Bill; A Chastened Insurer,” *Time Magazine*, June 9, 2003.
- **NBER**: “Surprisingly, there seems to be a fairly weak relationship between malpractice payments (for judgments and settlements) and premiums – both overall and by specialty.” (p. 14). “Past and present malpractice payments do not seem to be the driving force behind increases in premiums. Premium growth may be affected by many factors beyond increases in payments, such as industry competition and the insurance underwriting cycle. (p. 20). Katherine Baicker & Amitabh Chandra, NATIONAL BUREAU OF ECONOMIC RESEARCH, *The Effect of Malpractice Liability on the Delivery of Health Care* (Aug. 2004).
- **GAO**: A study released by the congressional General Accounting Office in 2003, *Medical Malpractice Insurance: Multiple Factors Have Contributed to Increased Premium Rates*, found absolutely no support for capping damages as a solution to bring down insurance rates for doctors.

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