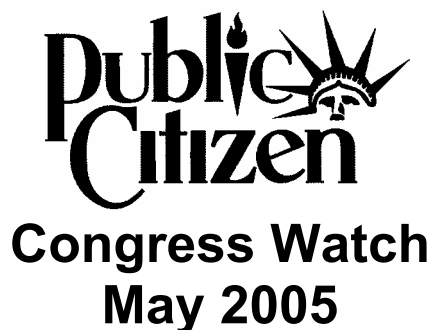


**District of Columbia  
Medical Malpractice  
Payout Trends 1991 – 2004:  
Evidence Shows Lawsuits  
Haven't Caused Doctors' Insurance Woes**



## **Acknowledgments**

This report was written by Public Citizen's Congress Watch Civil Justice Research Director Chris Schmitt, with editorial advice from Congress Watch Director Frank Clemente and contributions from Congress Watch counsel Barry Boughton.

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# District of Columbia Medical Malpractice Payout Trends 1991 – 2004: Evidence Shows Lawsuits Haven't Caused Doctors' Insurance Woes

The District of Columbia has become a center of activity in the national debate over a temporary spike in doctors' medical malpractice premiums and resulting proposals to limit damages patients can recover for medical negligence and error. Mayor Anthony Williams has proposed strict damage limits, which doctors and insurers favor. A task force appointed by City Councilmember David Catania is about to begin probing the malpractice issue. And an Alabama company, ProAssurance Corp., has proposed acquiring the District's leading malpractice insurer, NCRIC Group Inc. – a move Public Citizen believes will decrease competition and further increase many doctors' cost of insurance. By extension, this stands to hurt patient care.

As the District assumes this center-stage role, recent data on malpractice payments made to injured patients and their families on behalf of District doctors shows there is no evidence that the spike in some doctors' malpractice insurance rates is due to lawsuits and the legal system. This data is from the federal government's National Practitioner Data Bank (NPDB).<sup>1</sup>

Major findings of this report include:

- Despite complaints by some District doctors and politicians about a medical liability “crisis,” the study found that the total value of medical malpractice payments to victims made on behalf of District doctors has declined 52.5 percent from 1991 to 2004 when adjusted for medical inflation, which has averaged 4.7 percent a year. The decline was 64 percent from 2001 to 2004 – the peak years of the “crisis.”
- The number of malpractice payments paid on behalf of District doctors each year has declined 14.5 percent over the last 14 years (1991 to 2004), dropping from 55 to 47. Moreover, total payments have dropped 35.6 percent from 2001 to 2004, from 73 to 47, when warnings about the “crisis” began.
- The median value of District doctors' malpractice payments to individuals, adjusted for inflation, has likewise fallen over the long- and short-term, by 22.9 percent from a level of \$175,000 in 1991, and by 31.6 percent since a peak of \$197,300 in 1998.
- The number of malpractice payments of \$1 million or more, adjusted for inflation, has fallen from a high of 7 in both 1998 and 2001 to zero in 2004.
- Rather than providing windfalls to patients with minor injuries, malpractice payments overwhelmingly benefit those most seriously injured. In the District, 79 percent of payments

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<sup>1</sup> See the section at the end of this report entitled, “Background on the NPDB and Methodology.”

for 2004 involved major or significant permanent injuries, or death. Measured by total damages paid out, the most serious cases accounted for an even greater share of the total: 91 percent, or \$14.1 million, compared to only 9 percent, or \$1.4 million, for minor injuries.

- Obstetricians complain they have been hurt the most. But the proportion of all District doctor malpractice payouts made on behalf of OBs declined 43.7 percent from 1991 to 2004, from 35.7 percent of all payouts to 20.1 percent. At the same time, the total number of payouts by OBs grew only modestly, from 14.5 percent of all payments in 1991 to 17 percent in 2004.
- The number of OBs in the District has grown from 216 in 1995 to 226 in 2003 – a 4.6 percent increase. Meanwhile, the number of births per 1,000 women of child-bearing age has declined 18.5 percent from 1995 to 2002, the latest year for which data is available. As the fertility rate declines, so does the marketplace for obstetricians.
- As Public Citizen has found to be true nationally, a small number of doctors account for the lion's share of all malpractice payments, and many of them go undisciplined by the District's Board of Medicine or state medical boards. Just 4.3 percent of D.C. doctors, each of whom has had two or more malpractice payouts, were responsible for 47.3 percent of all payments from 1990 to 2004. Moreover, only 15.8 percent of doctors with five or more malpractice payouts have been disciplined by the D.C. Board of Medicine or a state medical board.

Public Citizen's analysis of NPDB data for the District also underscores that the real malpractice crisis today is inadequate patient safety, not lawsuits or the legal system. Rather than complain about malpractice liability, Public Citizen believes, doctors should improve their own performance, and thus better protect their patients.

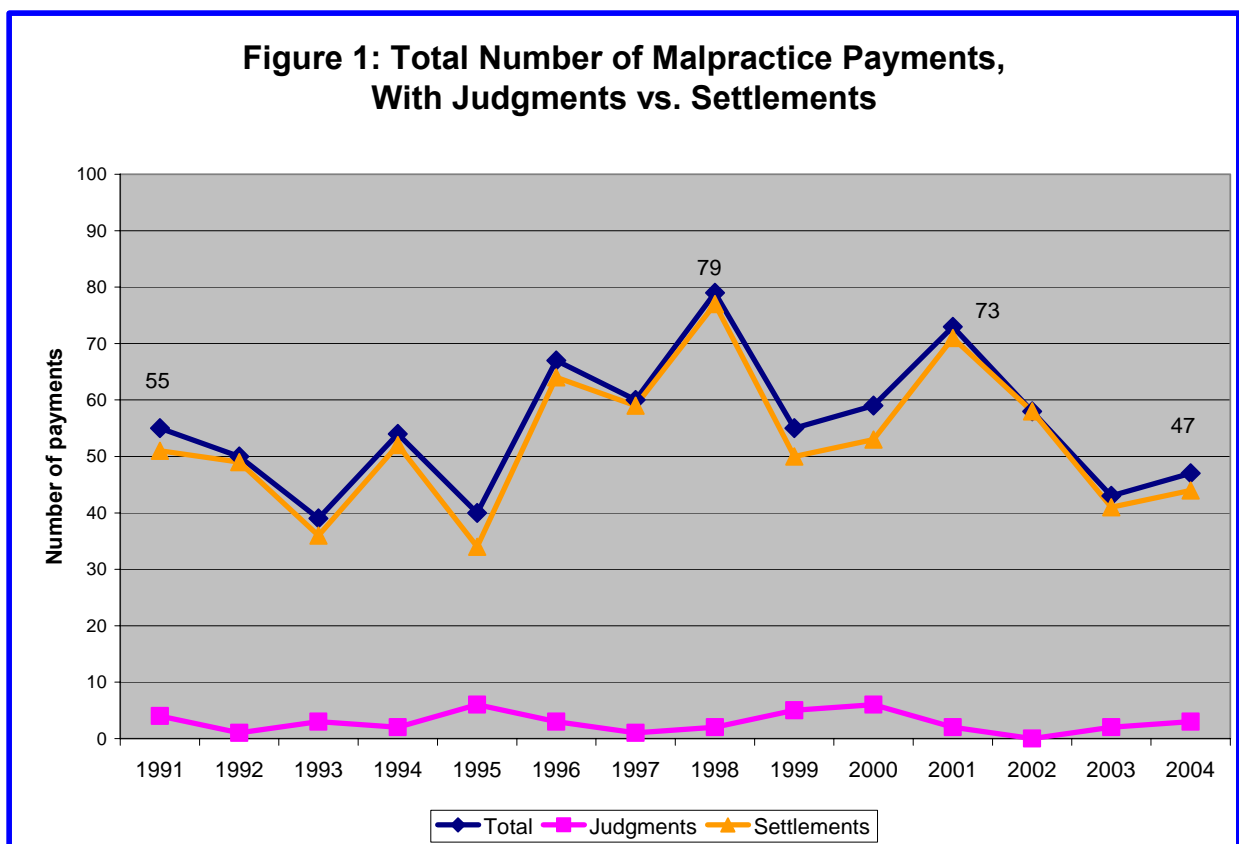
Nationally, one-third of medical malpractice cases that produced a payout in 2004<sup>2</sup> – 4,158 – involved patient deaths. Yet, as a landmark study by the Institute of Medicine in 1999 showed, an estimated 44,000 to 98,000 patient deaths occur each year following preventable medical errors in hospitals. Thus, stemming preventable errors in hospitals alone would conservatively prevent 10 times as many deaths as are now accounted for by malpractice cases.

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<sup>2</sup> This data for the period January 31 forward.

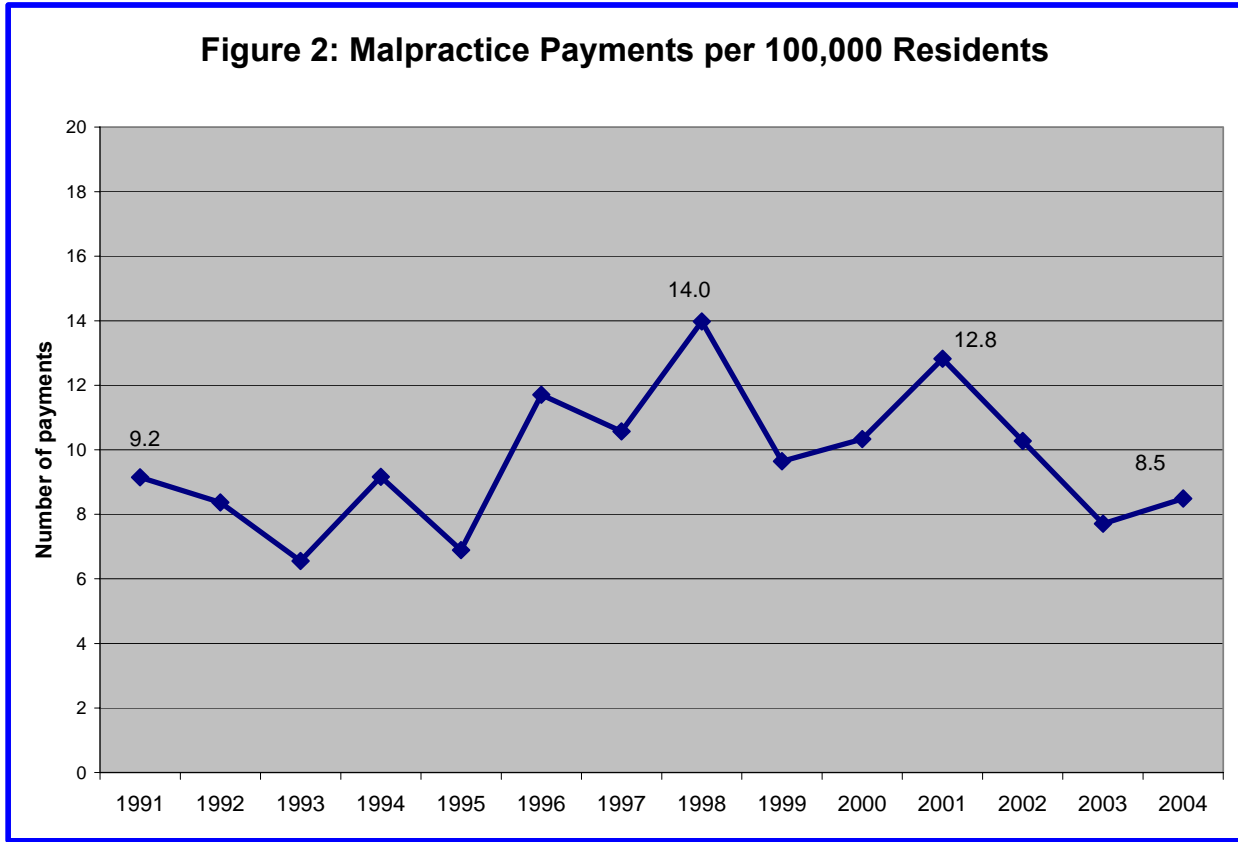
## D.C.'s Number of Malpractice Payments Is Down

Like their counterparts nationally, District doctors and insurers have been complaining about a growing medical liability crisis. But the number of malpractice payments paid on behalf of District doctors each year – chiefly by their insurance companies – has actually declined 14.5 percent over the last 14 years (1991 to 2004). The total number of payments has fallen 40.5 percent since a peak of 79 payments in 1998 to 47 in 2004. Even during recent years when complaints about the “crisis” began, annual payments declined 35.6 percent from 2001 to 2004. (Figure 1)



Source: Public Citizen analysis of data from the National Practitioner Data Bank

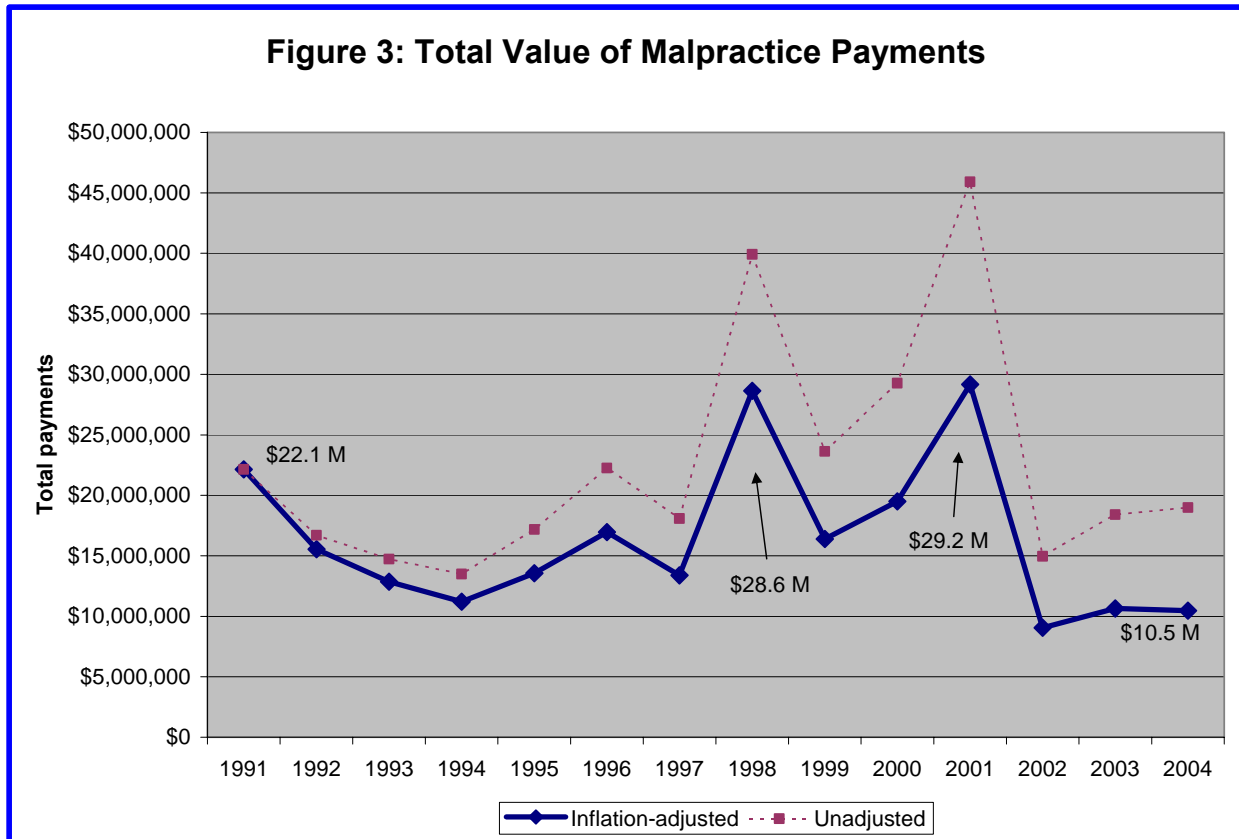
Adjusted for District population changes, the number of payments per 100,000 people has followed a similar pattern. Payments are down 7.6 percent from 1991 through 2004, and are down 39.3 percent since the peak in 1998. Payments are also down 33.6 percent since 2001, a period when many District doctors faced double-digit rate hikes from the leading malpractice insurer. (Figure 2)



Source: Public Citizen analysis of data from the National Practitioner Data Bank

## Total and Median D.C. Malpractice Payment Amounts Are Down Considerably

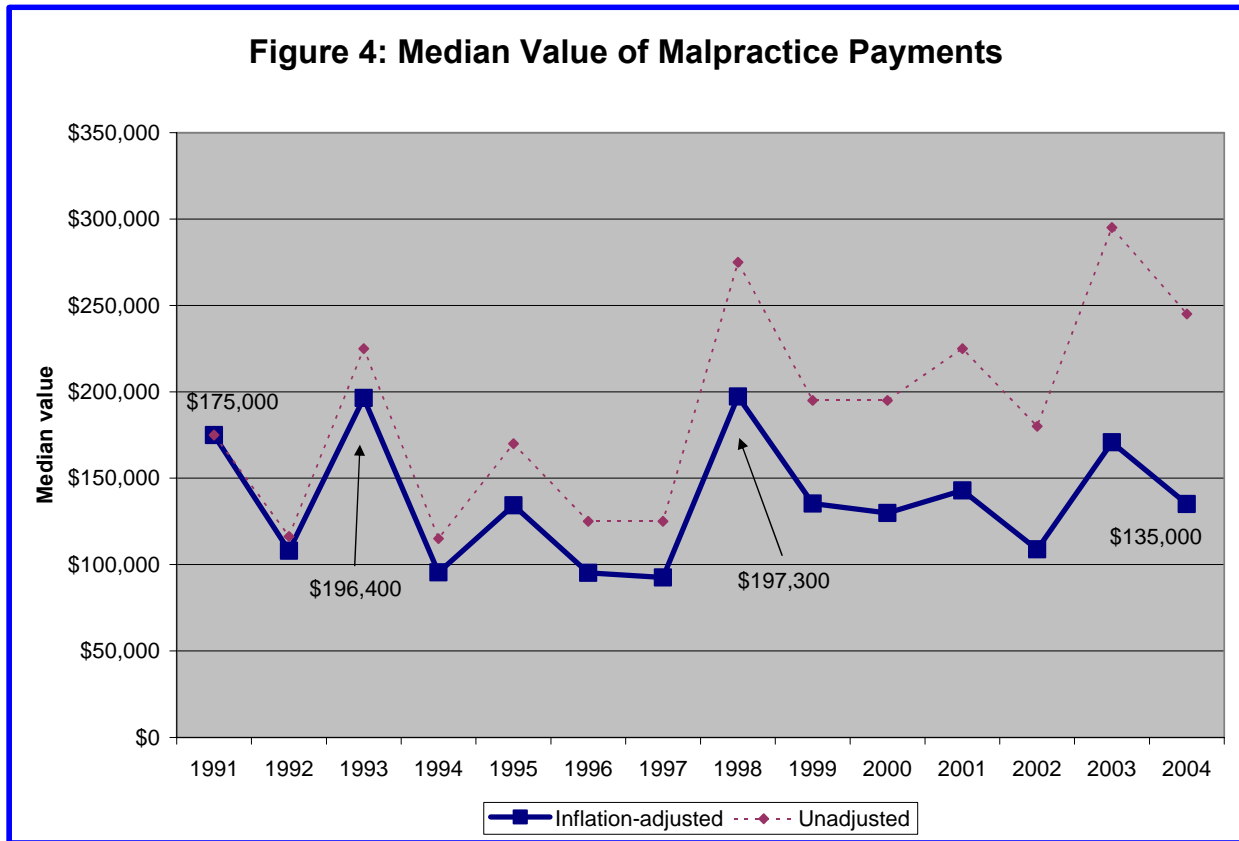
The total value of medical malpractice payments on behalf of District doctors has fallen significantly, over both the long- and short-term. Since 1991, the total is down 52.5 percent, from \$22.1 million to an inflation-adjusted \$10.5 million in 2004. (Medical inflation, measured by the U.S. Bureau of Labor Statistics, has averaged 4.7 percent from 1991 to 2004.) From an inflation-adjusted peak of \$29.2 million in 2001, the total in 2004 has plummeted 64.0 percent. (Figure 3)



Source: Public Citizen analysis of data from the National Practitioner Data Bank

Note: The price index used for inflation adjustments in this report is the Medical Care Services series of the Consumer Price Index - All Urban Consumers, as reported by the U.S. Department of Labor Bureau of Labor Statistics. From 1991 to 2004, this index increased at an average annual rate of 4.7 percent.

The median value of District doctors' malpractice payments to patients or their families, adjusted for medical inflation, has likewise fallen over the long- and short-term, by 22.9 percent since 1991, and by 31.6 percent since a peak in 1998.<sup>3</sup> (Figure 4)



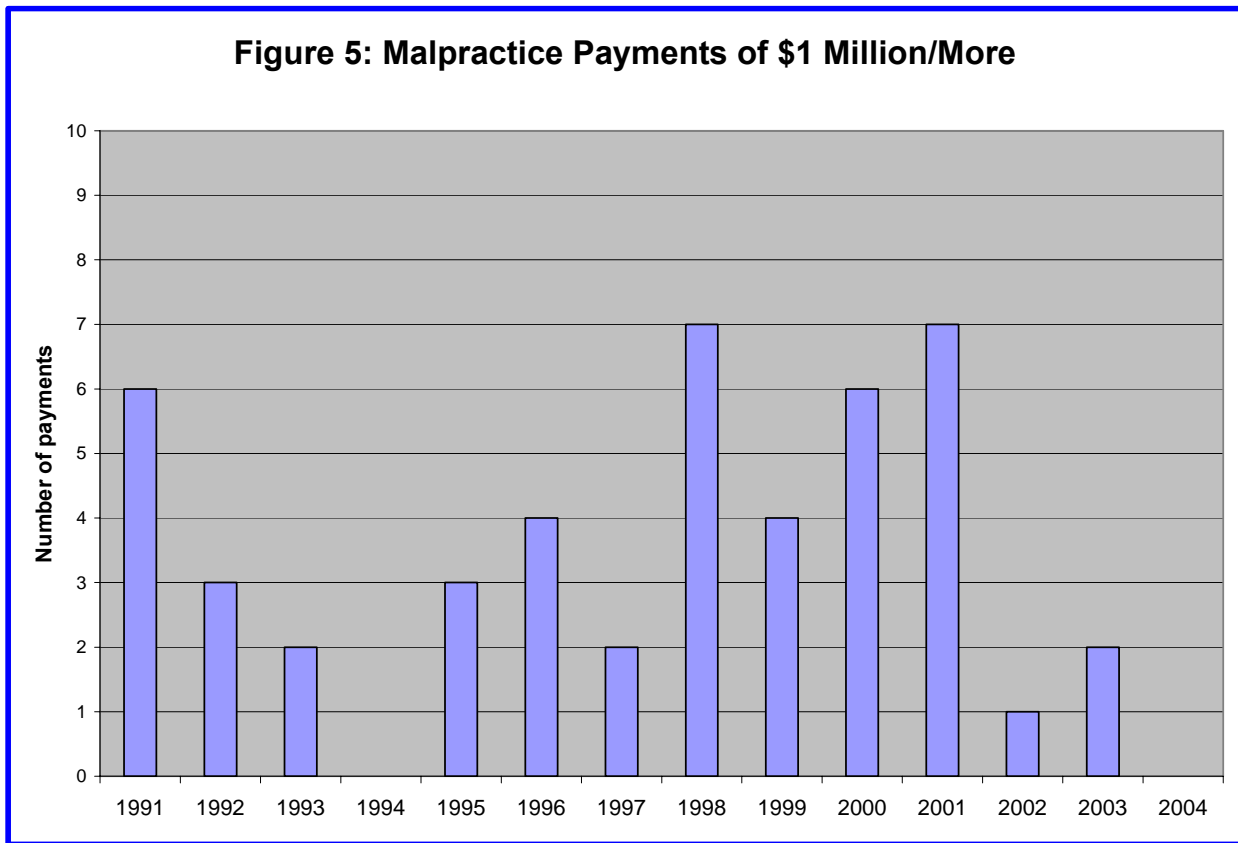
Source: Public Citizen analysis of data from the National Practitioner Data Bank

<sup>3</sup> The price index used for inflation adjustments in this report is the Medical Care Services series of the Consumer Price Index - All Urban Consumers, as reported by the U.S. Department of Labor Bureau of Labor Statistics. From 1991 to 2004, this index increased at an average annual rate of 4.7 percent.



## D.C.'s Number of Multimillion-Dollar Payouts Has Fallen to Zero

Those seeking to limit patients' ability to recover damages for injuries complain of a surge in multimillion-dollar payments. But in the District, the trend has been just the opposite. The number, and proportion, of malpractice payments of \$1 million or more made on behalf of doctors, adjusted for inflation, has fallen sharply in recent years, from a high of seven in 1998 and 2001 to zero in 2004.<sup>4</sup> (Figure 5)

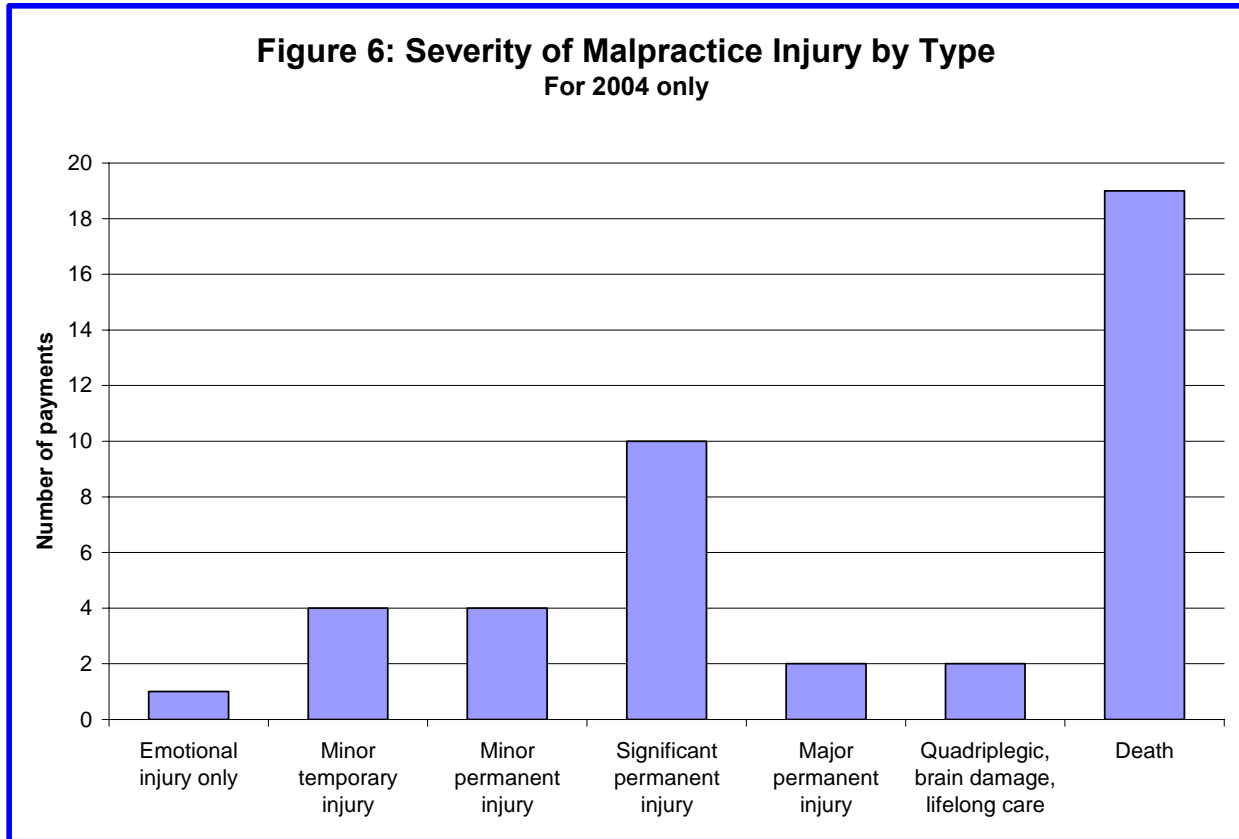


Source: Public Citizen analysis of data from the National Practitioner Data Bank

<sup>4</sup> This does not necessarily mean there were no million-dollar awards or settlements in the District for 2004 – just that no payments for at least that amount, on an inflation-adjusted basis, were recorded last year on behalf of doctors.

## The System Works – The Worst Cases Account for the Bulk of Malpractice Payouts

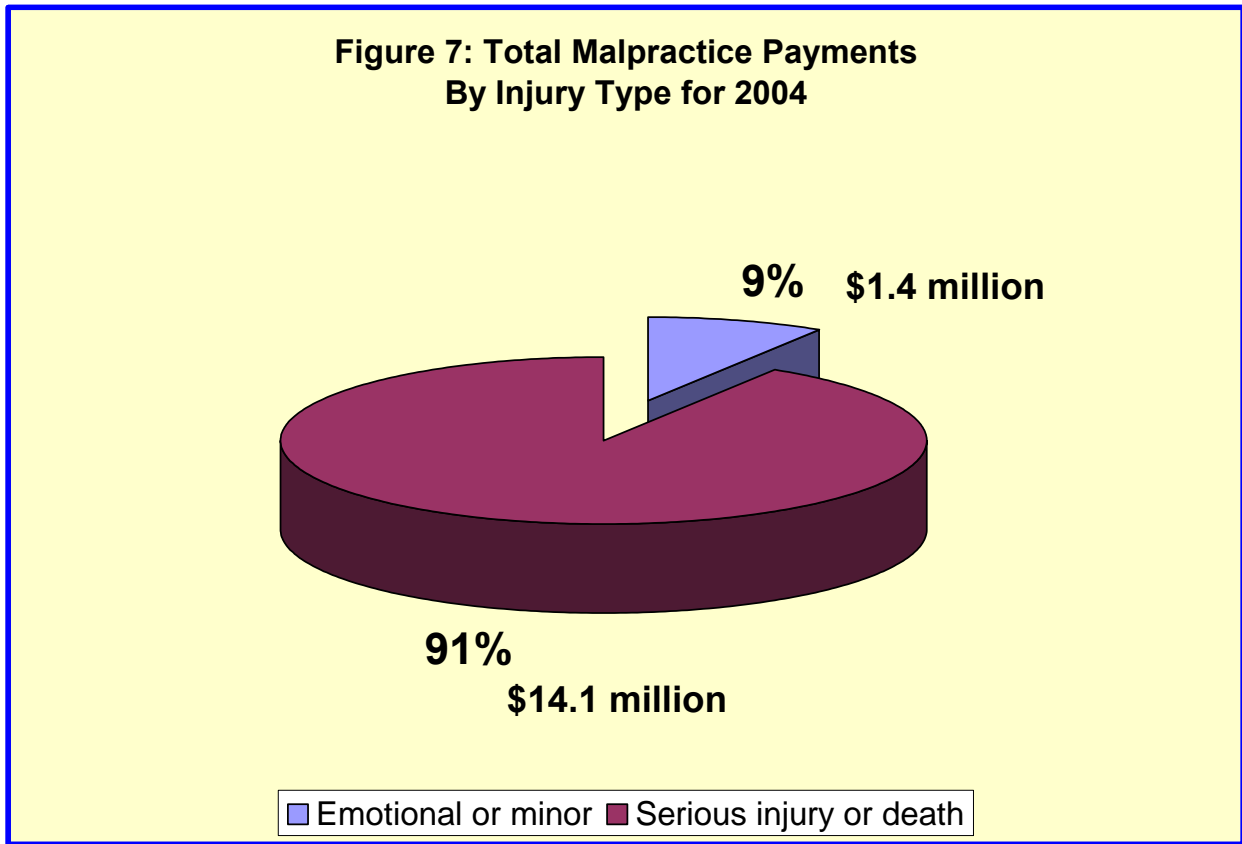
Rather than providing windfalls to patients seeking compensation for minor injuries, the medical negligence system is rational in its outcomes, new data reported to NPDB shows. In the District, 78.6 percent of payments for 2004 involved major or significant permanent injuries, or death, according to this new information.<sup>5</sup> (Figure 6)



Source: Public Citizen analysis of data from the National Practitioner Data Bank

<sup>5</sup> As noted earlier, this data is available as of January 31, 2004. Forty-two cases were available for analysis for 2004.

Measured by total damages paid out, rather than by number of payouts, the most serious cases account for an even greater total – 91.0 percent of the total payments made, compared to only 9.0 percent for minor injuries.<sup>6</sup> (Figure 7)

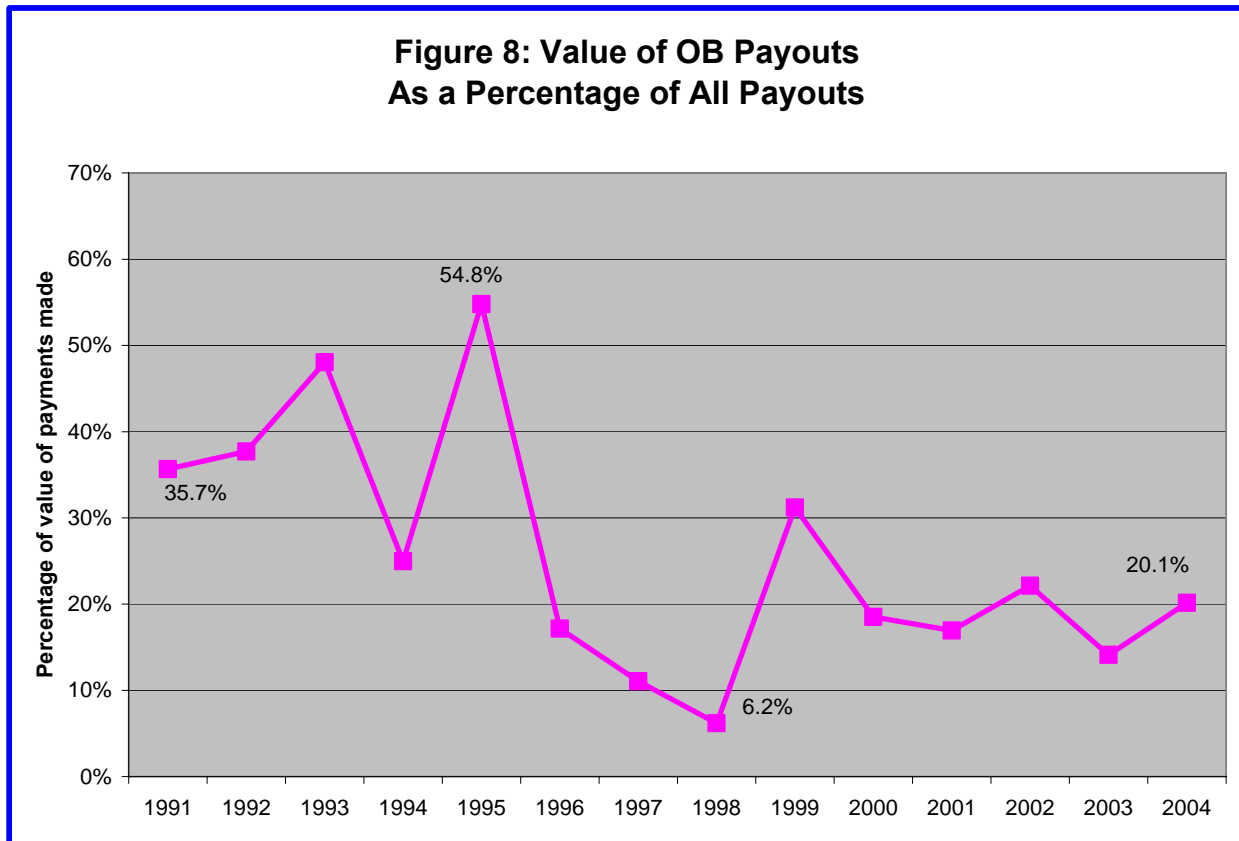


Source: Public Citizen analysis of data from the National Practitioner Data Bank

<sup>6</sup> Because of the relatively small number of cases available for analysis, Public Citizen does not disaggregate the District’s total malpractice payments beyond the two categories shown, e.g. “emotional or minor” and “serious injury or death.”

## D.C.'s Obstetrics Payouts Are Down Markedly, With No Flight of OBs from the District

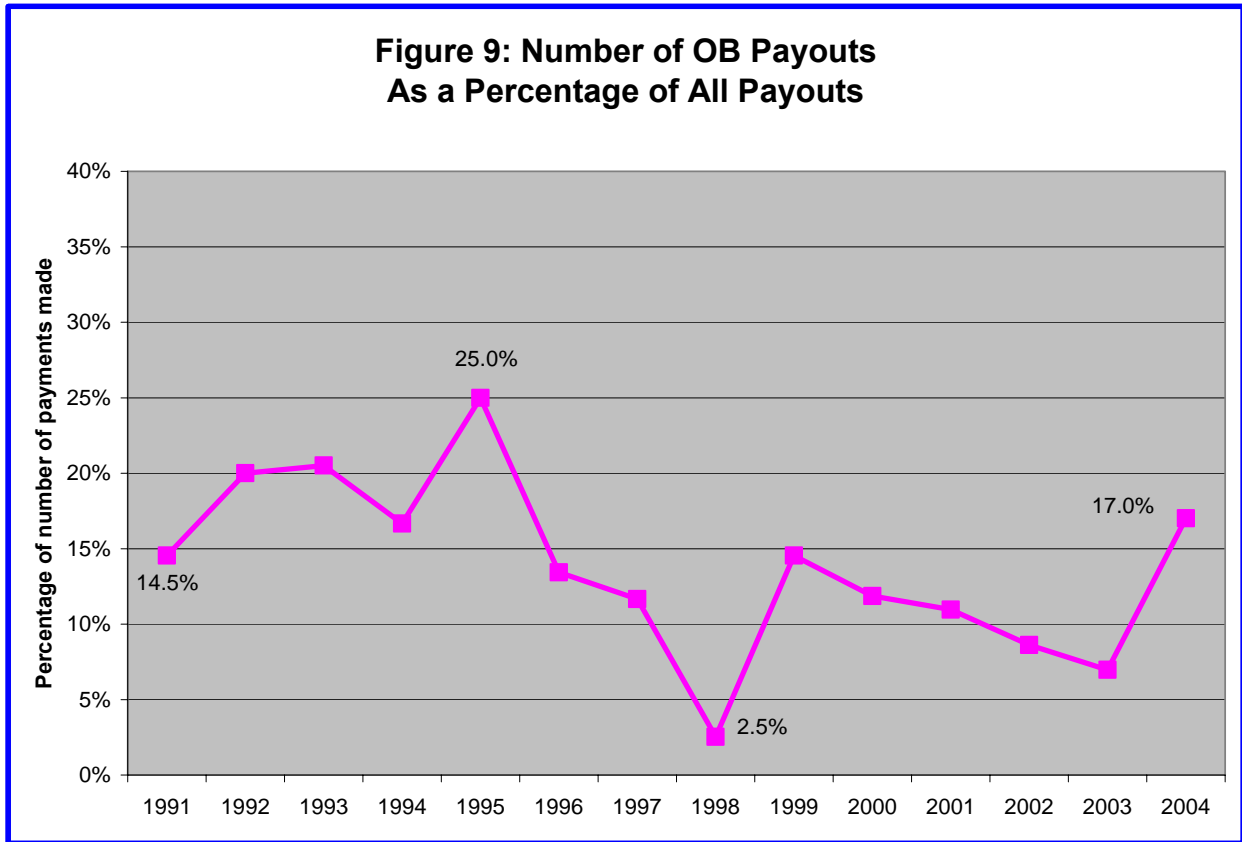
Among doctors, the loudest complaints about big jumps in malpractice insurance rates concern obstetrics. However, there has been a 43.7 decline in the portion of payouts attributed to OB cases as a percentage of all payouts – a drop from 35.7 percent of the value of all payouts in 1991 to 20.1 percent in 2004. (Figure 8)



Source: Public Citizen analysis of data from the National Practitioner Data Bank

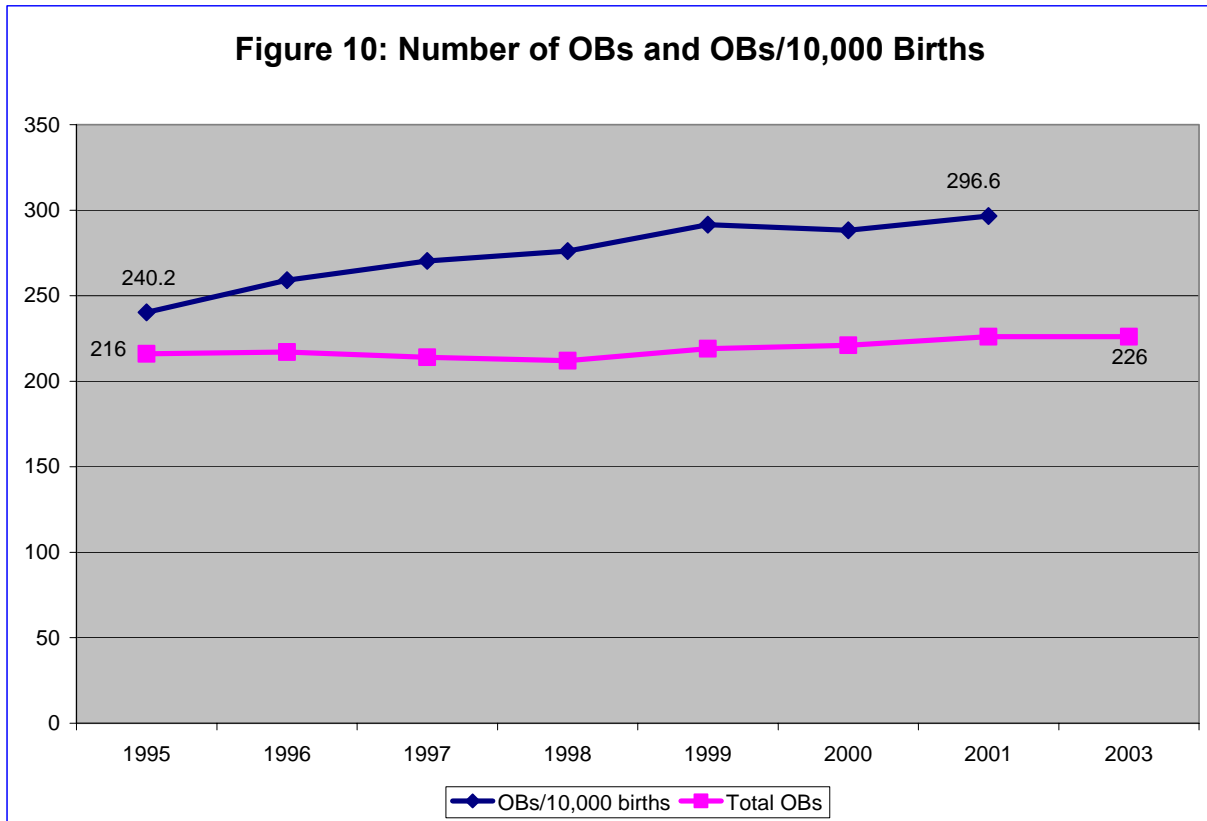
At the same time, the number of obstetrics-related payouts, as a percentage of all payouts made on behalf of District doctors, is little changed from 1991 to 2004. Figures vary considerably year-to-year, due to the District's relatively small size. But over time, the trend has been relatively flat, rising from 14.5 percent of payments in 1991 to 17.0 percent in 2004. (Figure 9)

This, coupled with the trend in value of OB payments (Figure 8), suggests that if OB physicians' malpractice insurance premiums have jumped, the explanation does not lie in the number or value of such payouts.



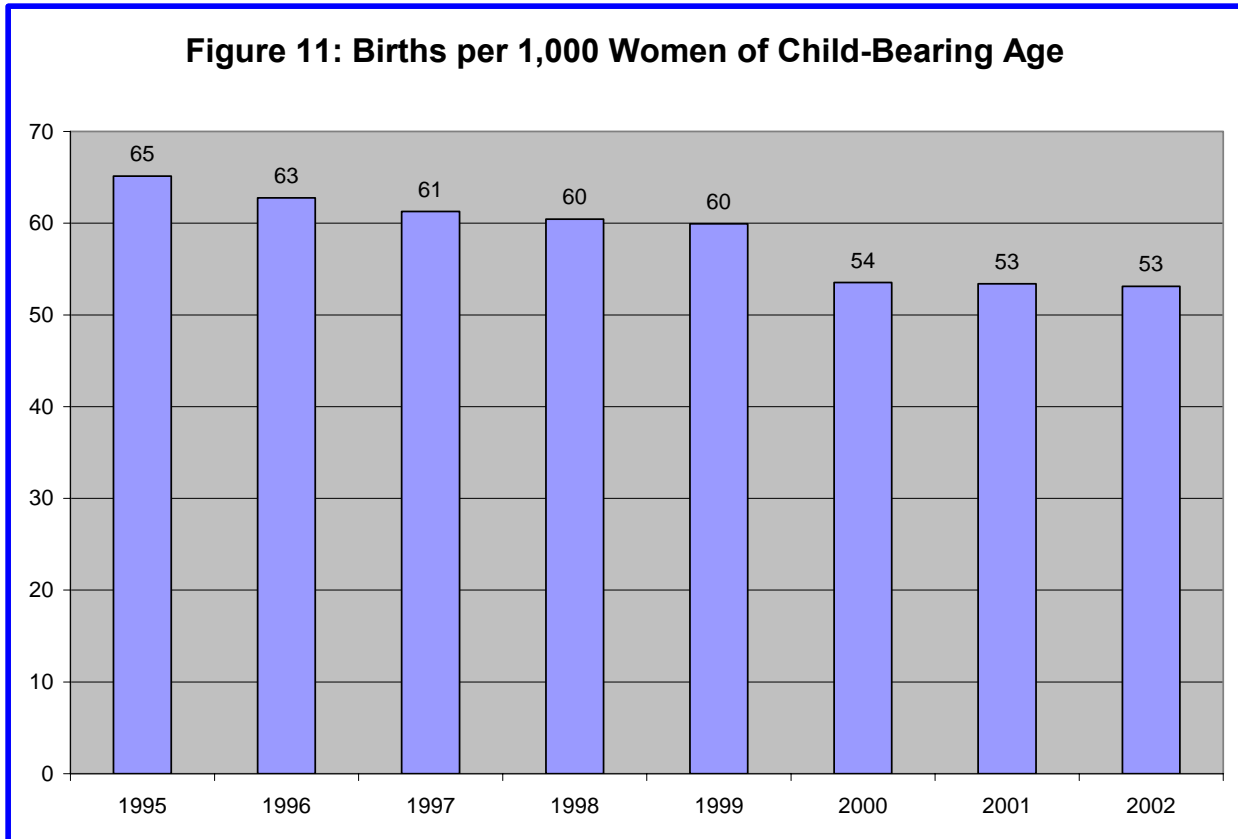
Source: Public Citizen analysis of data from the National Practitioner Data Bank

A common complaint among doctors is that because patients are winning huge damage awards, the resulting malpractice premium increases are driving obstetricians out of practice in the District. The latest available data, however, show that the number of OBs has been steady, rising by 4.6 percent from 1995 to 2003, from 216 to 226. Meanwhile, adjusted for a declining number of births in the District, the number of OBs has been steadily increasing and is up 23.5 percent during 1995-2001, from 240.2 to 296.6 per 10,000 births. (Figure 10)



Source: Public Citizen analysis of data from the District's State Health Profile, December 2003, and annual reports of the American Board of Medical Specialties (ABMS). For OBs/10,000 births, data not available for after 2001. For Total OBs, data not available for 2002. Note: For Total OBs, data is available for 2004, but Public Citizen does not include that here because a significant change in data collection by ABMS likely means the information is not compatible with previous years.

If District obstetricians are unhappy, one reason may be that there has been an 18.5 percent decline in the fertility rate of District women between 1995 and 2002, the latest year for which information is available. (Figure 11) As the fertility rate declines, the marketplace for obstetric services also shrinks.



Source: Public Citizen analysis of data from the U.S. Census Bureau and the District's State Health Profile, December 2003. Women of child-bearing age are those aged 15-44. Data not available for after 2002.

## About 4 Percent of D.C. Doctors Are Responsible for Nearly Half of Medical Malpractice Payouts

The insurance and medical communities argue that medical malpractice litigation amounts to a giant “lottery,” in which lawsuits are random events unrelated to the care provided by a physician. If the tort system is a lottery, it is indeed rigged, because some doctors’ numbers come up much more often than others. According to NPDB data, a small percentage of District doctors has paid multiple claims, and it is these doctors who are responsible for much of the malpractice.

- Just 4.3 percent of District doctors have been responsible for 47.3 percent of all malpractice payouts to patients, according to NPDB data from September 1990 through 2004. Each of these doctors has made at least two payouts.
- Just 1.6 percent of doctors, each of whom has had three or more malpractice payouts, were responsible for 25.4 percent of all payouts.
- Less than 1 percent of doctors – 0.8 percent – each of whom has had four or more malpractice payouts, were responsible for 15.4 percent of all payouts.
- About 85 percent of doctors have never had a medical malpractice payout since the NPDB was created in 1990.

**Figure 12: Number and Amounts of Medical Malpractice Payments To Patients Paid on Behalf of D.C. Doctors, 1990-2004**

Number of Payment Reports	Number of Doctors With Payments	Total Number of Payments	Percentage of Total Doctors (4,022)	Percentage of Total Number of Payments	Total Amount of Payments
All	585	786	14.5%	100.0%	\$315,996,500
1	414	414	10.3%	52.7%	\$172,653,750
2 or more	171	372	4.3%	47.3%	\$143,342,750
3 or more	66	200	1.6%	25.4%	\$70,838,250
4 or more	31	121	0.8%	15.4%	\$37,675,000
5 or more	19	90	0.5%	11.5%	\$27,719,500

Source: Public Citizen analysis of data from the National Practitioner Data Bank; number of doctors from American Medical Association, “Physician Characteristics and Distribution in the US,” calculated as an average of total doctors for 1995 and 2001, which is the mid-point of the period studied.



## D.C. Doctors with Repeated Malpractice Payouts Suffer Few Consequences

By focusing attention on repeat offenders, overall patient safety can be dramatically improved. Local medical boards and health care providers have not done enough to rein in doctors who repeatedly make medical errors and commit medical negligence. According to Public Citizen’s analysis of NPDB data, disciplinary actions such as license suspension or revocation have been infrequent for District physicians with multiple malpractice payouts.

- Only 8.2 percent of District doctors with two or more malpractice payouts were disciplined by the District’s Board of Medicine, or another state medical board.
- Only 10.6 percent of doctors with three or more malpractice payouts were disciplined.
- Only 15.8 percent of doctors with five or more malpractice payouts were disciplined.

**Figure 13: D.C Doctors with Two or More Medical Malpractice Payouts Who Have Been Disciplined (Reportable Licensure Actions), 1990 – 2004**

Number of Payout Reports	Number of Doctors With Payouts	Number of Doctors With One or More Reportable Licensure Actions	Percent of Doctors With One or More Reportable Licensure Actions
2 or more	171	14	8.2%
3 or more	66	7	10.6%
4 or more	31	5	16.1%
5 or more	19	3	15.8%
10 or more	2	1	50.0%

Source: Public Citizen analysis of data from the National Practitioner Data Bank.

## Examples of D.C. Repeat Offender Doctors Who Have Gone Undisciplined

The extent to which doctors have multiple payouts to patients for medical malpractice claims and go undisciplined is illustrated by the following NPDB descriptions of 10 District physicians who have made between 4 and 10 malpractice payouts totaling more than \$1 million per doctor, yet have not been disciplined by a local medical board. The NPDB does not disclose to the public the identity of these physicians.

- **Physician Number 11535** had at least 6 malpractice payouts between 1991 and 2001, three times for improper management of surgeries, improper choice of delivery method, delay in treatment of fetal distress, and failure to instruct or communicate with a patient or family. The damages add up to \$5,240,000.
- **Physician Number 144445** had at least 5 malpractice payouts between 1999 and 2002, for failure to treat, failure to obtain consent or lack of informed consent, delay in diagnosis, improper management of medication, and improper surgical performance. The damages add up to \$3,717,500.
- **Physician Number 7170** had at least 5 malpractice payouts between 1994 and 2004, for failure to diagnose, failure to perform an obstetrics procedure, an unspecified diagnosis error, an unspecified surgical error, and an unspecified obstetrics error. The damages add up to \$2,675,000.
- **Physician Number 7207** had at least 5 malpractice payouts between 1991 and 2002, twice for improper treatment technique, twice for improper management of treatment, and failure to diagnose. The damages add up to \$2,560,000.
- **Physician Number 7241** had at least 5 malpractice payouts between 1993 and 2001, for delay in obstetrics performance, improper surgical performance, failure to obtain consent or lack of informed consent, improper obstetrics management, and an unspecified obstetrics error. The damages add up to \$2,255,000.
- **Physician Number 70117** had at least 5 malpractice payouts between 1995 and 2004, twice for delay in obstetrics performance, an improperly performed vaginal delivery, failure to diagnose, and an unspecified obstetrics error. The damages add up to \$1,820,000.
- **Physician Number 62700** had at least 4 malpractice payouts between 1994 and 2004, for an improperly performed vaginal delivery, delay in treatment of fetal distress, improper management of an obstetrics case, and an unspecified surgical error. The damages add up to \$1,787,500.

- **Physician Number 15941** had at least 10 malpractice payouts between 1990 and 2004, twice for unspecified surgical errors, failure to treat, delay in diagnosis, delay in treatment, improper surgical management, improper treatment technique, improper medication technique, a patient positioning problem, and unnecessary surgical procedure. The damages add up to \$1,602,500.
- **Physician Number 8706** had at least 6 malpractice payouts between 1991 and 2001, three times for failure to diagnose, failure or delay in referral or consultation, failure to report on patient condition, and an unspecified treatment error. The damages add up to \$1,450,000.
- **Physician Number 95192** had at least 4 malpractice payouts between 1996 and 2001, twice for improper obstetrics management, failure or delay in referral or consultation, and an unspecified surgical error. The damages add up to \$1,240,000.

## Background on the NPDB and Methodology

The National Practitioner Data Bank contains, among other things, reports on malpractice payments made on behalf of doctors by malpractice payers. Chiefly, these payers are insurance companies, but they also include other entities, such as state-run insurance funds and self-insured health care providers. Those making malpractice payments are required to report them to the NPDB under provisions of the Health Care Quality Improvement Act of 1986. Information provided to the NPDB is confidential, but the NPDB makes available a public use file that removes personal identifying information. The NPDB also contains information on disciplinary actions taken against doctors. Within the health care industry, the NPDB's major purpose is to provide a repository of data that those institutions employing doctors can query for background checks.

NPDB data is available for a portion of 1990 and for full years thereafter. Most information in this report covers annual periods from 1991 to 2004. Where annual comparisons are not being made, Public Citizen's analysis covers the entire period of the database, e.g. 1990 to 2004.

**Please cite Public Citizen for information in this report as follows:** Public Citizen's analysis of malpractice payments for District of Columbia doctors, as reported in the National Practitioner Data Bank public use file, for the years 1991 to 2004.

For a copy of data underlying any portion of this report, contact Chris Schmitt at 202-454-5115.