



A REVIEW OF  
NEW YORK STATE'S  
DOCTOR DISCIPLINE  
SYSTEM

## **SYSTEM FAILURE**

**ENDORSED BY:  
CENTER FOR JUSTICE & DEMOCRACY, CENTER FOR MEDICAL  
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# Acknowledgements

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## ***SYSTEM FAILURE:***

### **A REVIEW OF NEW YORK STATE'S DOCTOR DISCIPLINE PROGRAM**

In 2008, Governor Paterson and the New York Legislature approved changes in the state's oversight of problem physicians. The legislation was supported by a wide array of consumer and patients' rights organizations. The promise was clear: New York would use its new powers to do a better job identifying problem physicians and take swift action in cases where patients were at risk.

This report examines important aspects of the state's physician discipline program: identifying, investigating and when appropriate, sanctioning dangerous doctors. One traditional measure of that success has been the number of physicians that the state takes action against each year. While it is impossible to know the actual number of incompetent, impaired or negligent doctors among the 64,000 practicing in the state, it is a widely-held view that 5-10% may represent a threat to the public's health. And it is the government's job to identify those questionable doctors and address their failings, either through retraining or, if appropriate, limitation or loss of licensure.

One of the additional tools added to the New York State Department of Health's arsenal in identifying problem doctors was a new 2008 requirement that the Department review the roughly two thousand medical malpractice payments in order to help identify instances of professional misconduct. The public had every reason to expect that within two years the Department would have significantly boosted its enforcement actions.

### **SUMMARY OF FINDINGS**

**Finding: The number of doctors being sanctioned by New York's Office of Professional Misconduct (OPMC) has declined to a fifteen-year low, despite a substantial increase in the number of physicians practicing in the state and a dramatic increase in complaints.** In 2009, New York sanctioned 292 physicians and physicians' assistants (PAs), the fewest since 1995, despite an increase in the number of doctors practicing in the state (26 percent) and a jump in the number of complaints against physicians (63 percent). As reported by the state, few complaints originated from other doctors or health facilities.

**Finding: Nearly 60 percent of OPMC actions were based on sanctions taken by other states, the federal government or the courts, not directly as the result of an OPMC-initiated investigation. Moreover, of those punished by the Department because of misconduct, most continue to practice in the state of New York.** While it is important that the OPMC act when another jurisdiction has punished a physician for misconduct or violations of law, it is the work of identifying and punishing misconduct by doctors that occurs in New York State that must be the primary focus of OPMC investigators. For patients seeking care in New York State's OPMC should be the front line protection from medical misconduct.

**Finding: Medical malpractice payments<sup>1</sup> continue to be remarkably stable both as to the number of physician payments (frequency) and the aggregate amount paid to injured patients (severity).** Federal data from the National Practitioner Data Bank (NPDB) continues to show that New York’s medical malpractice experience is remarkably stable.

**Finding: The aggregate amount paid to injured patients in New York for malpractice judgments and settlements has dropped dramatically since 2006.** Despite the rhetoric, and increases in doctors’ medical liability insurance premiums, the NPDB data shows that for the past few years New York’s aggregate of malpractice payouts, unadjusted for inflation, dropped from \$822 million in 2006 to \$736 million in 2009, or roughly 10 percent.

**Finding: When viewed over a longer period of time, aggregate malpractice payments in New York have risen at roughly the same rate as overall inflation from 1993 through 2009.** The NPDB data clearly shows that over the past seventeen (1993 – 2009) New York’s medical malpractice payout experience, after adjustment for inflation, has remained stable.

**Finding: The frequency of malpractice payments has declined, even though there has been a dramatic increase in the number of doctors practicing in New York.** The number of malpractice payments made has hovered around 2,000 annually, although in recent years that amount has continually decreased to just over 1,800 in 2009. During that period of time, the number of doctors practicing in New York State has increased by over 26 percent, from 51,193 doctors in 1995 to 64,818 in 2009.

**Finding: A small minority of doctors are responsible for the lion’s share of malpractice payments.** According to the NPDB data, during the period 1992 through 2009, 4,200 doctors have been responsible for half of money paid out for malpractice awards. That number represents a small percentage of doctors practicing in New York State during that period.

**Finding: New York is near the top of the nation when it comes to the amount paid out by the small number of doctors with repeat malpractice payments.** As mentioned above, a small number of doctors are responsible for roughly half of malpractice payments. However, when compared with other states, New York doctors who have made three malpractice payments or more are responsible for a much larger percentage of total malpractice payments.

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<sup>1</sup> Throughout the report, we refer to “malpractice payments.” That phrase refers to the total amount of dollars paid out by doctors as the result of medical malpractice awards – either due to a court judgment or a settlement. Unless stated otherwise, it does not refer to the frequency of payments made by doctors, just the total dollar amount.

In fact, according to federal data, *New York ranks near the top of the nation in the amount of malpractice payments paid by this small group of doctors.*

**Finding: Malpractice payment amounts appear related to serious injuries or deaths.** Death, catastrophic and permanent injuries received the most compensation from malpractice payments, both in frequency and dollars. This confirms findings from previously published studies.

**Finding: New York State has the third highest per capita number of doctors in the nation. In addition the number of doctors working in New York is growing at a significantly higher rate than the state's overall population.** From 1995 through 2009 the number of active physicians practicing in New York increased over 20 percent. During the period 1995 through 2009, the state's population grew only 5.5 percent. In addition, New York has one of the nation's highest ratios of OB-GYNs per number of women of childbearing age.

## **SUMMARY OF RECOMMENDATIONS**

**New York State should require that every health facility and physician's office post an approved notice of the right to file a complaint against a physician and how to access the physician profiles<sup>2</sup> and OPMC<sup>3</sup> websites.** The public deserves to know of the availability of these important programs, but there are no significant public educational efforts to promote it.

**New York State should investigate why its medical malpractice experience is so skewed by doctors with multiple payouts.** New York State should also conduct a forensic accounting of the loss experience and business model of medical malpractice carriers. The state should also evaluate the OPMC's review of doctors' malpractice experience. These efforts should be geared to answer the following questions:

1. Why is it that, in the face of stable loss experience, the current malpractice premiums paid by physicians are claimed by carriers not to be sufficient to cover losses and maintain required reserves?
2. Are doctors with repeat malpractice payments a key factor in New York's malpractice loss experience and why? Is providing insurance of last resort (high risk pool) for these doctors with repeated payouts in the public interest?

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<sup>2</sup> See: [www.nydoctorprofiles.com](http://www.nydoctorprofiles.com).

<sup>3</sup> See: <http://www.health.state.ny.us/nysdoh/opmc/main.htm>.

## ***SYSTEM FAILURE:***

### **A REVIEW OF NEW YORK STATE'S DOCTOR DISCIPLINE PROGRAM**

State government is traditionally charged with licensing and monitoring the conduct of health care professionals. In New York State the first line of defense in assuring that misconduct by physicians and physician assistants is investigated and, when appropriate, punished, is the Health Department's Office of Professional Medical Conduct (OPMC).

The vast majority of physicians in New York State practice medicine that meets the high standards of professional conduct. However, those who are guilty of misconduct can cause enormous pain and suffering for their patients. Because it is the licensing authority, the state must act forcefully and quickly to minimize the harm to patients that is often the result of professional misconduct.

#### **THE OFFICE OF PROFESSIONAL MEDICAL CONDUCT**

There are 85,370 licensed physicians in New York State, of which 64,818 are in active medical practice within the state.<sup>4</sup> Physicians practicing out of state, or otherwise not in active practice in New York, must keep their New York license current by paying the \$600 biennial fee – a requirement common in other professions.

The OPMC is charged with monitoring physicians and physician assistants and intervening when it concludes that such professionals pose a threat to the public because of their misconduct. It employs a staff of investigators and prosecutors to investigate complaints and file charges. The Board of Professional Medical Conduct (BPMC) is responsible for hearing cases and taking action against licensees after they have been formally charged by the OPMC. The Board is comprised of 147 members that are available to hear cases against physicians in the presence of an administrative law judge. Usually a three-member BPMC panel – two physicians and one "public" member – sit to hear the case and decide the punishment.

#### **2008 REFORMS**

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<sup>4</sup>The Federation of State Medical Boards of the United States, Inc., *Summary of 2009 Board Actions*, April 2010. Accessed at: <http://www.fsmb.org/pdf/2009-summary-board-actions.pdf>. The Federation of State Medical Boards (FSMB) is a national non-profit organization representing the 70 medical boards of the United States and its territories.

After news reports on the failures of the state Health Department to aggressively monitor and sanction a grossly substandard physician practicing on Long Island, Governor Paterson and the legislature approved legislation to improve the state's oversight of doctors. Below are two key provisions of the 2008 reforms:

**The new law mandated that the OPMC use medical malpractice information to initiate investigations.** Under the new law, the OPMC would proactively review malpractice closed claims experience and initiate investigations based on frequency, severity, patterns of misconduct or any other indicators determined by OPMC.

**The new law mandated that the Health Department release the names of doctors who have been formally charged with misconduct.** The law follows the practice of virtually every other state in the nation.

**FINDING: NEW YORK IS TAKING FEWER ACTIONS AGAINST PHYSICIANS THAN AT ANY TIME SINCE 1995, DESPITE REFORMS, ADDITIONAL RESOURCES, A SWELLING NUMBER OF PHYSICIANS, AND A GOAL OF REDUCING MEDICAL INJURIES.**

A review of OPMC activity from 1995 through 2009 reveals a total of 5,254 doctors sanctioned. OPMC’s productivity shows a disturbing trend: despite a significant growth in the number of physicians practicing in the state, the number of sanctions is declining. According to the tallies kept by Federation of State Medical Boards<sup>5</sup> on physician discipline in all states, the number of OPMC sanctions in 2009 was the lowest since 1995 – despite the 2008 changes designed to strengthen the system.

**NUMBER OF OPMC “PREJUDICIAL ACTIONS” TAKEN AGAINST PHYSICIANS<sup>6</sup>**

Year	Number of doctors with prejudicial actions	Total number of physicians practicing in New York State	New York State population <sup>7</sup>
1995	336	51,193	18,524,104
1996	314	53,409	18,588,460
1997	334	53,409	18,656,546
1998	346	54,926	18,755,906
1999	365	55,732	18,882,725
2000	390	55,531	18,998,044
2001	365	56,995	19,088,978

<sup>6</sup> Federation of State Medical Boards, *Annual Reports* 1995 through 2009. Federation of State Medical Boards. Summary of 2009 Board Actions, Accessible at [http://www.fsmb.org/fpdc\\_basummaryarchive.html](http://www.fsmb.org/fpdc_basummaryarchive.html). The “change” row compares the amount in 1995 with the amount in 2009. Calculations by authors.

<sup>7</sup> Estimates for years between 2000 and 2009 are from the U.S. Census Bureau: <http://www.census.gov/popest/counties/CO-EST2009-01.html> Older years’ numbers are from the New York State Empire State Development Corporation, “Components of Population Change, New York State 1960-2007.” The “change” row compares the amount in 1995 with the amount in 2007. See: <http://empire.state.ny.us/NYSDataCenter/PopulationHousingEstimates.html>. Calculations by authors.



2002	339	56,995	19,161,873
2003	395	59,581	19,231,191
2004	383	59,581	19,297,933
2005	388	63,427	19,330,891
2006	356	61,931	19,356,564
2007	316	65,644	19,422,777
2008	335	62,770	19,467,789
2009	292	64,818	19,541,453
<b>Change</b>	<b>-44</b>	<b>+13,625 (26.61%)</b>	<b>+1,017,349 (5.49%)</b>

**FINDING: THERE HAS BEEN A BIG JUMP IN COMPLAINTS AGAINST DOCTORS, YET FEW FROM HEALTH CARE PROVIDERS**

While the number of actions has declined it is clear that there has not been a reduction in complaints. As the chart below shows, for the period 1995 through 2007 (the most recent year), the number of complaints against doctors has increased dramatically, rising 63.5 percent (the report does not examine why such complaints are on the rise). Interestingly, those most likely to have observed medical mistakes – other health care professionals and the institutions in which they worked – are by far the least likely to file complaints.

**SOURCES OF COMPLAINTS TO THE OPMC, 1995-2007<sup>8</sup>**

Year	Total Complaints	Public	Gov't Agency	Out of State	Insurers	Physicians	Hospital/ Health Facility	Other
2007	8222	57%	14%	10%	1%	2%	N/A	2%
2006	8001	51%	15%	13%	16%	2%	N/A	3%
2005	7358	58%	15%	14%	8%	2%	N/A	3%
2004*	6925	58%	15%	12%	9%	2%	N/A	4%
2003*	6275	*	*	*	*	*	*	*
2002*	7295	*	*	*	*	*	*	*
2001	6983	55%	16%	10%	11%	2%	N/A	6%

<sup>8</sup> New York State Department of Health, Office of Professional Medical Conduct, Annual Reports, 1995-2007 is the most recent Annual Report on the Department's website. See: <http://www.health.state.ny.us/nysdoh/opmc/anrpt.htm>.

Notes:

If a category is blank (N/A), there was no such category or information listed in that year's report.

\* The annual reports for the period 2002-2004 were combined into one report.

\*\* In these years an additional category was "health department," which constituted 9% in 1996 and 12% in 1995. In 2007, the category "profiling" added 1% to the complaint total.

\*\*\* During these periods the term "peer" was used, we assumed that it was consistent with the term "physicians."

2000	6106	61%	11%	11%	10%	3%	3%	1%
1999	6690	60%	10%	11%	13%	2%	3%	1%
1998	6440	63%	11%	10%	8%	3%	3%	2%
1997	5782	N/A	N/A	N/A	N/A	N/A	N/A	N/A
1996	5151	56%	7%**	13%	6%	4%***	4%	>1%
1995	5028	53%	5%**	14%	8%	4%***	3%	>1%

**FINDING: NEARLY 60 PERCENT OF OPMC ACTIONS WERE BASED ON SANCTIONS MADE BY OTHER STATES, THE FEDERAL GOVERNMENT OR THE COURTS, NOT DIRECTLY AS THE RESULT OF AN OPMC-INITIATED INVESTIGATION. MOST OF THOSE WHO WERE PUNISHED CONTINUE TO PRACTICE.**

In 2009, according to our analysis, nearly 60 percent of OPMC sanctions were based on disciplinary actions taken by a federal or another state agency. While it is important that the OPMC act when another jurisdiction has identified and punished a physician for misconduct, it is no substitute for a robust effort to investigate complaints originating from within the state.

Our findings are consistent with national analyses. According to the federal government's National Practitioner Data Bank (NPDB), New York ranks third from the bottom in the percentage of actions taken against in-state doctors. While there are differences in methodology (our analysis excludes actions taken by New York agencies outside the state Health Department, e.g. court actions, the NPDB does not), from September 1990 through December 2006, actions against in-state doctors constituted just under one-half of the total actions taken. This percentage was far less than the national average of nearly 73 percent.<sup>9</sup>

*Moreover, in the majority of cases in which negligence of the provider was a key finding of the OPMC, the doctor continued to practice in the state.*

A large percentage of physicians who were sanctioned by the OPMC continued to practice. It is highly unlikely that these physicians' patients were aware of their physician's punishment. A patient can only find out about such a disciplinary action if: (1) they know how to access this information through the Health Department's web-sites<sup>10</sup> or 800 hot line number; and, (2) they take the initiative to do so. There is at present no requirement that patients be informed that their physician is practicing under a sanction and/or limitations.

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<sup>9</sup> National Practitioner Data Bank, Annual Report, 2006, Table 17. The NPDB calculated that percentage to be 49.9 percent. Only Hawaii (33.3 percent) and Pennsylvania (45.2 percent) had lower percentages.

<sup>10</sup>Address for the website is: [www.health.state.ny.us/nysdoh/opmc/main.htm](http://www.health.state.ny.us/nysdoh/opmc/main.htm). Disciplinary and other information about physicians can also be found at [www.nydoctorprofile.com](http://www.nydoctorprofile.com).

Physician's offices, and other facilities where they practice, should be required to post information to guide patients to these resources that provide vital information about a doctor's history, education and practice.

**FINDING: MALPRACTICE PAYMENTS ARE AN INDICATOR OF POSSIBLE MISCONDUCT.**

Very few physicians ever make a medical malpractice payment. According to a recent report, eight percent of New York's doctors accounted for 71 percent of the malpractice payouts.<sup>11</sup> Not only are those few doctors responsible for the lion's share of medical malpractice payments, but also they are more likely to be punished by licensing boards or health facilities.

According to the federal government's National Practitioner Data Bank, "Physicians with high numbers of Malpractice Payment Reports tended to have at least some Adverse Action Reports filed by state licensing boards, the federal government or health facilities and plans. Although 95.2 percent of the 97,743 physicians with only 1 Malpractice Payment Report in the NPDB had no Adverse Action Reports, only 65.7 percent of the 525 physicians with 10 or more Malpractice Payment Reports had no Adverse Action Reports. *Generally, the data show that as a physician's number of Malpractice Payment Reports increases, the likelihood that the physician has Adverse Action Reports also increases.*"<sup>12</sup> [Emphasis added]

The correlation between medical malpractice payments and actions against licenses or privileges bolsters the requirement that the Department examine a doctor's malpractice experience to determine if an investigation is warranted.

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<sup>11</sup> Public Citizen, A Self-Inflicted "Crisis": New York's Medical Malpractice Insurance Troubles Caused by Flawed State Rate Setting and Raid on Rainy Day Fund, November 2007. p. 24.

<sup>12</sup> National Practitioner Data Bank, Annual Report 2006, p. 42.

## **MEDICAL MALPRACTICE PAYMENTS HAVE DROPPED SIGNIFICANTLY OVER THE PAST FOUR YEARS**

Doctors in New York State have decried rapidly increasing malpractice insurance premiums. Lobbyists for some doctors have claimed that malpractice insurance premiums have increased “55 to 80%” over the past five years. These statements posit the “randomness and unpredictability” of the litigation system and contend that “these costs have continued their rapid rise.”<sup>13</sup>

But are these claims true? Unfortunately, the malpractice insurance system is shrouded in secrecy and it is virtually impossible to access primary source material that would confirm or refute the medical lobby’s claims. However, the federal government *requires* that all malpractice payment information must be reported to its National Practitioner Data Bank (NPDB).

The NPDB is prohibited from releasing doctor-specific malpractice information, but does disclose aggregate statistical information. Such information can be obtained on a state-specific basis.

For those interested in examining medical malpractice payments in New York, the NPDB provides a treasure trove of information. A review of New York’s experience over the past seventeen years reveals a system that is not unpredictable, but is, in fact, quite stable. Payments are not spiraling out-of-control, quite the contrary. The total number of payments made on an annual basis has remained remarkably stable. Also, during the last few years the dollar amount of malpractice payments made has decreased.

This first analysis examines the state’s malpractice payment history. The next section examines the amount paid out when adjusted for inflation.

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<sup>13</sup> Medical Society of the State of New York, Legislative Program 2009, p. 1.

**National Practitioner Data Bank<sup>14</sup>:**

**The Total Amount Paid for Medical Malpractice in New York State**

**1993 – 2009**

<b>Year</b>	<b>Total Payments Made</b>	<b>Total Number of Payments (rank)</b>
1993	\$515,494,950	2419 (3)
1994	\$563,105,050	2419 (3) <sup>15</sup>
1995	\$421,001,500	2010 (15)
1996	\$464,228,800	2125 (13)
1997	\$496,561,550	2194 (12)
1998	\$546,708,850	2319 (9)
1999	\$578,362,500	2371 (8)
2000	\$662,860,200	2631 (2)
2001	\$712,857,300	2679 (1)
2002	\$668,996,350	2257 (10)
2003	\$747,286,950	2390 (6)
2004	\$821,477,250	2373 (7)
2005	\$733,012,400	2213 (11)
2006	\$822,670,650	2417 (5)
2007	\$753,217,950	2026 (14)
2008	\$743,567,550	1881 (16)
2009	\$735,996,050	1806 (17)

<sup>14</sup> See Methodology section for detailed description of how we used the database.

<sup>15</sup> In all charts, if there is a “tie” in ranking it is listed as such. Subsequent ranks start by skipping a number. In this case, two years “tied” for third place, then we skipped to the fifth ranked year, (there is no fourth) 2006. All following charts will follow the same pattern.



## **Over The Last Seventeen Years, Doctors' Malpractice Payments Have Increased At Roughly The Same Rate As Inflation**

The medical lobby claims New York State is in "crisis" due to rapidly rising malpractice premiums that are the result of a liability system that is "out of control."

- The amount that New York State physicians paid out for medical malpractice claims remained stable from 1993 through 2009, after adjusting for inflation.

**Actual medical malpractice payout compared with projected inflation-adjusted medical malpractice payout for years**

**1993 and 2009<sup>16</sup>**

<b>Year</b>	<b>Malpractice payouts</b>
1993 <b>Actual</b> Physicians' Malpractice Payouts	\$515,494,950
2009 <b>Projected</b> Malpractice Payouts adjusted for inflation with 1993 as base	\$765,348,000
2009 <b>Actual</b> Physicians' Malpractice Payouts	\$735,996,050

The actual amount paid out in 2009 is remarkably consistent with payouts made in 1993, when adjusted for inflation (as measured by the Consumer Price Index). The federal data makes it clear that New York's malpractice payments have remained the constant for many years.

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<sup>16</sup> National Practitioner Data Bank. For the "projected" category, using the 1993 actual figures as a base, the authors calculated how inflation would have increased the 1993 costs through 2009. The NPDB recommends using the inflation rate for the consumer price index. The NPDB recommends use of that adjustment index since medical malpractice payments cover a wide range of services. Inflation source: Bureau of Labor Statistics, Consumer Price Index for All Urban Consumers 1993 – 2009. Calculations by authors. Totals rounded off to the nearest dollar.

**A SMALL NUMBER OF DOCTORS ARE RESPONSIBLE FOR  
THE OVERWHELMING NUMBER OF MEDICAL MALPRACTICE  
PAYMENTS IN NEW YORK STATE**

New York State has one of the highest per capita number of doctors in the nation. Only a small minority of those doctors *ever* makes a malpractice payment and an even smaller number are responsible for more than half of all payouts over the past 17 years.

Between 1992 and 2009, 4,265 doctors made three or more payments. This number represents a tiny fraction of the total number of doctors who have practiced in New York State since 1992.

That small share represents over half of the amount of *all* medical malpractice payments made during that time.

**National Practitioner Data Bank:  
Number of Doctors Who Have Made Medical Malpractice Payments New York  
1992 – 2009**

<b>Number of Payment Reports</b>	<b>Number of Doctors Who Made Payments</b>	<b>Total Number of Payments</b>	<b>Sum of These Payments</b>	<b>Percent of Total Dollars Paid Out Statewide</b>
Total	23,263	43,559	\$11,838,043,150	
1	14,626	14,626	\$3,462,320,400	29.25%
2	4,372	8,744	\$2,454,494,000	20.73%
3	1,940	5,820	\$1,708,056,800	14.43%
4	938	3,752	\$1,126,969,800	9.52%
5 through 9	1,175	7,244	\$2,327,508,450	9.66%
10 or more	212	3,373	\$758,693,700	6.41%

**NEW YORK STATE RANKS NEAR THE TOP OF THE NATION WHEN IT COMES TO THE AMOUNT OF MALPRACTICE PAYMENTS MADE BY A SMALL NUMBER OF DOCTORS**

New York State is not alone in the finding that a small number of doctors are responsible for the bulk of malpractice payments. What makes New York State different is the fact that such a large amount of payouts are made by this small number of doctors.

*According to federal data, New York ranks 1<sup>st</sup> in the nation in the number of doctors practicing in-state who have made three or more malpractice payments, and 2<sup>nd</sup> in the percentage of in-state practicing doctors who fall into this category. As seen below, the percentage of malpractice payouts paid by these doctors is far above the national average and puts New York near the top of the states in which its malpractice payment history is driven by the small number of doctors:*

**Ranking the states with the highest percentage of malpractice payments made by doctors who have three or more malpractice payments from 1992 through 2009<sup>17</sup>**

State	Total Doctors with three or more payments	Rank	% of all doctors with three or more payments	Rank
PA	2,773	2	8.62%	1
NY	4,265	1	6.58%	2
MI	1,320	6	5.67%	3
LA	611	10	5.39%	4
WV	200	23	5.36%	5
NM	224	19	5.09%	6
KS	319	16	4.03%	7
FL	1,684	4	3.89%	8
NV	145	31	3.21%	9
IN	534	11	3.13%	10

Policymakers have not paid sufficient attention to this group of doctors. The state should carefully review the medical practices of these doctors to ensure that they are not offering substandard care. Moreover, the state must examine the impact that these doctors are having on the overall malpractice insurance premiums paid by New York doctors.

<sup>17</sup> The number of in-state doctors used in this analysis was obtained from the Federation of State Medical Boards, the malpractice payout information was obtained from the National Practitioner Data Bank.

## SERIOUS INJURIES TOP THE LIST OF PAYOUTS

One claim of opponents of New York's malpractice system is that it is random and unpredictable. Contrary to those claims, the NPDB reports that those patients who have suffered the most – either through permanent injuries or deaths – are the categories that have received the highest average malpractice payments.

A common-sense conclusion is that, in fact, New York's system is quite predictable – those injured the worst received the largest awards. It is a system that makes sense and is rational and fair.

### National Practitioner Data Bank: Patient Outcomes in Cases Involving Medical Malpractice Payments, New York 2009

Outcome	Total Value of Payments Paid (rank)	Average Payment (rank)	Number of Payments (rank)
Death	\$175,903,750	\$448,734.05 (4)	392 (1)
Minor Permanent Injury	\$97,485,750	\$317,543.15 (6)	307 (2)
Minor Temporary Injury	\$34,192,000	\$113,594.68 (8)	301 (3)
Major Temporary Injury	\$78,058,000	\$301,382.23 (7)	259 (4)
Significant Permanent Injury	\$170,537,500	\$679,432.27 (3)	251 (5)
Major Permanent Injury	\$100,260,050	\$721,295.32 (2)	139 (6)
Insignificant Injury	\$3,609,500	\$48,126.67 (10)	75 (7)
Quadriplegic, Brain Damage, Lifelong Care	\$69,920,000	\$1,319,245.28 (1)	53 (8)
Emotional Injury only	\$1,182,000	\$78,800 (9)	15 (9)
Cannot be determined from available records	\$4,847,500	\$346,250 (5)	14 (10)

## NEW YORK STATE CONTINUES TO HAVE ONE OF THE HIGHEST NUMBER OF DOCTORS IN THE NATION

Compared with the rest of the nation, in terms of the number of doctors *per capita*, New York State does extremely well. According to data published by the American Medical Association, New York boasts of having the *third* highest *per capita* number of doctors in the nation. New York's *per capita* number dramatically exceeds California, a state identified by the medical lobby as a "model" for the nation in terms of malpractice laws.

Ironically, New York also has one of the largest numbers of OB-GYNs, often identified as a specialty most at risk due to a so-called litigation crisis.

**American Medical Association:  
State-By-State Comparison of the Number of Doctors 2007<sup>18</sup>**

State	Number of Doctors	Number of Doctors per 100,000 population (1-10 rank)	Number of OB-GYNs	Number of OB-GYNs per 10,000 women of childbearing age (1-10 rank) <sup>19</sup>
Alabama	11,239	243	568	6
Alaska	1,717	251	84	6
Arizona	15,710	248	711	6
Arkansas	6,548	231	268	5
California	112,776	309	5,012	6
Colorado	14,515	299	675	7
Connecticut	14,753	421 (5)	709	10 (1)
Delaware	2,456	284	98	6

<sup>18</sup> American Medical Association, *Physician Characteristics and Distribution in the US*. 2009 edition. See Tables 3.7 and 6.17.

<sup>19</sup> U.S. Census Bureau: <http://www.census.gov/popest/states/asrh/SC-EST2008-02.html>. Table 2: Annual Estimates of the Resident Population by Sex and Age for Alaska: April 1, 2000 to July 1, 2008 (SC-EST2008-02-02). We used July 1, 2007 data in order to conform with the OB-GYN statistics made available by the AMA. Census Bureau data obtained in April 2009. Calculations by authors.

Florida	55,037	302	2,264	6
Georgia	23,239	243	1,390	7
Hawaii	4,665	363 (7)	253	10 (1)
Idaho	2,993	200	134	4
Illinois	39,986	311	1,853	7
Indiana	15,478	244	703	5
Iowa	6,536	219	208	4
Kansas	7,180	259	292	5
Kentucky	11,024	260	530	6
Louisiana	12,741	297	687	8 (8)
Maine	4,305	327	171	7
Maryland	26,402	470 (2)	1,156	10 (1)
Massachusetts	33,313	517 (1)	1,120	8 (8)
Michigan	28,356	282	1,362	7
Minnesota	17,178	330 (10)	627	6
Mississippi	5,961	204	327	5
Missouri	15,968	272	728	6
Montana	2,580	269	112	6
Nebraska	4,942	278	199	6
Nevada	5,591	218	284	5
New Hampshire	4,232	322	194	7
New Jersey	30,595	352 (8)	1,531	9 (4)
New Mexico	5,533	281	226	6
<b>New York</b>	<b>85,304</b>	<b>442 (3)</b>	<b>3,765</b>	<b>9 (4)</b>
North Carolina	26,046	287	1,286	7

North Dakota	1,769	277	51	4
Ohio	34,472	301	1,497	6
Oklahoma	7,245	200	332	5
Oregon	12,048	321	537	7
Pennsylvania	43,257	348 (8)	1,708	7
Rhode Island	4,430	419 (5)	204	9 (4)
South Carolina	11,514	261	581	6
South Dakota	2,012	253	74	5
Tennessee	18,137	295	908	7
Texas	56,531	236	3,005	6
Utah	6,269	237	286	5
Vermont	2,735	440 (3)	113	9 (4)
Virginia	24,162	313	1,241	8 (8)
Washington	20,353	315	777	6
West Virginia	4,760	263	201	6
Wisconsin	16,485	294	641	6
Wyoming	1,165	223	55	5



## Licensing of New Physicians in New York Has Been Steady

New York State continues to experience increases in all categories of newly licensed physicians. The number of newly licensed physicians was higher in 2009 (4,109) compared with 1998 (3,593).

### New York State Education Department:

#### The Number of Newly Licensed Doctors 1998 – 2009<sup>20</sup>

Year	Newly Licensed Doctors in New York
1998	3,593
1999	3,671
2000	3,491
2001	3,496
2002	3,656
2003	3,674
2004	3,908
2005	3,773
2006	4,170
2007	4,343
2008	4,387
2009	4,190
Percentage increase	16.62%

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<sup>20</sup> New York State Education Department "Licensed Issued," NYPIRG has tracked these numbers over the years. Current year is available at: <http://www.op.nysed.gov/prof/med/medcounts.htm>.

## NEW YORK'S PATIENT SAFETY CENTER

In 2000, the creation of a Patient Safety Center was touted by then-Governor Pataki as an important patient safety measure.<sup>21</sup> Although originally envisioned to have other safety responsibilities, the Center was subsequently assigned the newly created Physician Profile program that permitted New Yorkers to easily access a doctor's background. Governor Pataki and the legislature supported physician profiles because, in the words of the Health Department:

“Deaths can be avoided by providing patients with access to information that better informs them of physicians' education, training, credentials and experience and enables patients as consumers to actively participate in one of the most important health care decisions – the choice of physician. Immediate adoption of this rule is necessary in order to provide access to information, as well as timely reporting of updated or new information, which is of the utmost importance to consumers making decisions concerning access to high quality health care services.”<sup>22</sup>

The profile system requires physicians to self-report educational, board specialty, disciplinary, hospital credential and malpractice history, among other information. The inclusion of malpractice information – while publicly available at any courthouse – was vigorously opposed by the Medical Society of the State of New York. As part of the compromise that led to passage of the legislation, the profile system provides only limited malpractice information. Physicians only must post categorical information about the size of malpractice judgments or settlements and in the case of settlements, are only required to report any if they have paid three or more settlements over ten years. Information about the first and second settlement is not required to be posted on the profile unless the Commissioner deems it important for consumers to know of such payments. The Department has required that physicians report information on the first two settlements if the malpractice resulted in the “death or permanent injury” of the patient.<sup>23</sup>

Despite the importance of this information, few New Yorkers are exposed to announcements of the existence of the website. As seen in this report, a small number are responsible for many of the compensated medical injuries in the state. The state must do more to ensure a greater awareness of the website.

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<sup>21</sup> Former Governor Pataki's comments on Patient Health Information and Quality Improvement Act of 2000, <http://www.health.state.ny.us/nysdoh/healthinfo/pataki.htm>.

<sup>22</sup> Title 10 NYCRR, Part 1000, “physician profiling”

<sup>23</sup> Title 10 NYCRR, Part 1000.3 (b)(2).

**APPENDIX: COMPARISON OF THE NUMBERS OF DOCTORS PRACTICING, BY COUNTY, 1/1/2003-1/4/2010<sup>24</sup>**

County	Number		County	Number		County	Number	
	2009	2003		2009	2003		2009	2003
Albany	<b>1,492</b>	1,388	Jefferson	<b>214</b>	203	Saratoga	<b>442</b>	308
<u>Allegany</u>	<u>38</u>	<u>43</u>	Kings	<b>4,839</b>	4,246	<u>Schenectady</u>	<b>415</b>	<u>433</u>
<u>Bronx</u>	<u>1,793</u>	<u>1,795</u>	Lewis	<b>27</b>	18	Schoharie	<b>19</b>	<u>24</u>
Broome	<b>597</b>	582	Livingston	<b>71</b>	54	Schuyler	<b>23</b>	<u>24</u>
<u>Cattaraugus</u>	<u>105</u>	<u>117</u>	Madison	<b>106</b>	104	Seneca	<b>16</b>	<u>20</u>
Cayuga	<b>100</b>	95	Monroe	<b>2,936</b>	2,620	<u>Steuben</u>	<b>171</b>	<u>174</u>
Chautauqua	<b>171</b>	<u>208</u>	<u>Montgomery</u>	<u>76</u>	<u>81</u>	<u>St. Lawrence</u>	<b>152</b>	<u>166</u>
Chemung	<b>257</b>	247	Nassau	<b>8,419</b>	7,831	Suffolk	<b>4,829</b>	3,976
Chenango	<b>61</b>	55	New York	<b>16,384</b>	13,954	<u>Sullivan</u>	<b>89</b>	<u>93</u>
Clinton	<b>209</b>	180	Niagara	<b>273</b>	256	Tioga	<b>41</b>	39
Columbia	<b>123</b>	113	Oneida	<b>538</b>	531	Tompkins	<b>240</b>	208
Cortland	<b>64</b>	58	Onondaga	<b>1,746</b>	1,644	Ulster	<b>330</b>	322
Delaware	<b>38</b>	<u>49</u>	Ontario	<b>277</b>	235	Warren	<b>252</b>	219
Dutchess	<b>864</b>	722	Orange	<b>864</b>	727	<u>Washington</u>	<b>35</b>	<u>46</u>
Erie	<b>2,888</b>	2,760	<u>Orleans</u>	<u>31</u>	<u>32</u>	<u>Wayne</u>	<b>77</b>	<u>82</u>

<sup>24</sup> New York State Education Department. Current year is available at <http://www.op.nysed.gov/prof/med/medcounts.htm>. Counties that have seen a reduction in the number of doctors are underlined.

<u>Essex</u>	<u>36</u>	<u>47</u>	<u>Oswego</u>	<u>101</u>	<u>105</u>	Westchester	<b>6,199</b>	5,899
Franklin	<b>97</b>	94	Otsego	<b>307</b>	250	<u>Wyoming</u>	<b>38</b>	<u>47</u>
Fulton	<b>68</b>	66	Putnam	<b>235</b>	216	<u>Yates</u>	<b>29</b>	<u>31</u>
<u>Genesee</u>	<u>65</u>	<u>72</u>	Queens	<b>4,613</b>	4,450	<b>NYS TOTAL</b>	<b>67,548<sup>25</sup></b>	61,249
Greene	<b>46</b>	46	Rensselaer	<b>286</b>	261	<b>OTHER US</b>	<b>16,867</b>	13,286
Hamilton	<b>2</b>	<u>3</u>	Richmond	<b>1,412</b>	1,333	<b>NON-US</b>	<b>245</b>	235
<u>Herkimer</u>	<u>45</u>	<u>51</u>	Rockland	<b>1,234</b>	1,196	<b>TOTAL</b>	<b>84,660</b>	74,770

The overwhelming majority of counties have seen relative stability in the number of physicians, if not an outright increase. Eighteen counties (of 62) show a decrease in the number of doctors: Allegany, Bronx, Cattaraugus, Delaware, Essex, Franklin, Genesee, Herkimer, Montgomery, Oswego, Schenectady, Steuben, St. Lawrence, Sullivan, Washington, Wayne, Wyoming and Yates. However, more counties saw a drop in their population during roughly the same period (34 of 62).

#### NEW YORK COUNTIES' POPULATION CHANGES, 7/1/03 THROUGH 7/1/09<sup>26</sup>

County	Increased?	County	Increased?	County	Increased?
Albany	N	Jefferson	Y	Saratoga	Y
Allegany	N	Kings	Y	Schenectady	Y
Bronx	Y	Lewis	N	Schoharie	N
Broome	N	Livingston	N	Schuyler	N
Cattaraugus	N	Madison	Y	Seneca	Y
Cayuga	N	Monroe	N	Steuben	N

<sup>25</sup> The State Education Department total in-state number of physicians does not match the number released by the Federation of State Medical Boards. The Federation's numbers are used elsewhere in the report, since we can obtain historical information for comparisons.

<sup>26</sup> U.S. Census Bureau: "Estimates of Resident Population Change for Counties and County Rankings" <http://www.census.gov/popest/counties/tables/CO-EST2009-03-36.xls>.

Chautauqua	N	Montgomery	N	St. Lawrence	N
Chemung	N	Nassau	Y	Suffolk	Y
Chenango	N	New York	Y	Sullivan	Y
Clinton	Y	Niagara	N	Tioga	N
Columbia	N	Oneida	N	Tompkins	Y
Cortland	N	Onondaga	N	Ulster	Y
Delaware	N	Ontario	Y	Warren	Y
Dutchess	Y	Orange	Y	Washington	Y
Erie	N	Orleans	N	Wayne	N
Essex	N	Oswego	N	Westchester	Y
Franklin	N	Otsego	N	Wyoming	N
Fulton	Y	Putnam	Y	Yates	N
Genesee	N	Queens	Y	<b>Total 2003</b>	18,998,044
Greene	Y	Rensselaer	Y	<b>Total 2009</b>	19,541,453
Hamilton	N	Richmond	Y		
Herkimer	N	Rockland	Y		

## **METHODOLOGY AND NOTES ON THE USES OF THE NATIONAL PRACTITIONER DATA BANK PUBLIC USE DATA FILE**

The information referenced to the National Practitioner Data Bank (NPDB) Public Use Data File was obtained through the U.S. Department of Health and Human Services, Health Resources and Services Administration, Bureau of Health Professions, Division of Practitioner Data Banks. It was downloaded on 4/20/2010 from <http://www.npdb-hipdb.hrsa.gov/>.

Federal law requires all insurers to report medical malpractice payments to the NPDB – an entity that is part of the U.S. Department of Health and Human Services. In an effort to ensure that states, hospitals and other health facilities had access to physicians' disciplinary and malpractice histories, the U.S. Congress created the NPDB in the mid-1980s.<sup>27</sup> The physician-specific information contained in the NPDB is not available to the public, but non-identifiable, aggregate data is available to researchers. We reviewed New York's aggregate data from the NPDB in order to evaluate organized medicine's portrayal of a medical malpractice system spinning out of control.

A word about the NPDB; the General Accounting Office has criticized the NPDB for failing to receive reports of all malpractice payments made by physicians across the nation. While we fully recognize the limitations in using the NPDB, there is no other publicly available information about physicians' medical malpractice experiences.<sup>28</sup> We believe using the NPDB data to identify *trends* in malpractice insurance in New York State provides a useful and valid yardstick.

The database contained several variables which appeared in the NPDB's Data File in several fashions. Whenever this occurred, we followed the NPDB's recommendation for the most accurate way to examine the data.

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<sup>27</sup> General Accounting Office, National Practitioner Data Bank: Major Improvements are Needed to Enhance Data Bank's Reliability, GAO-01-130, November 2000.

<sup>28</sup> GAO, *Ibid.*