



90 Broad Street ♦ Suite 401  
New York, NY 10004  
(212) 267-2801 ♦  
[info@insurance-reform.org](mailto:info@insurance-reform.org)  
[www.insurance-reform.org](http://www.insurance-reform.org)  
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## FAR FROM BEING “BROKEN,” THE CURRENT MEDICAL MALPRACTICE SYSTEM WORKS WELL

The Harvard School of Public Health found that the current system works: 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.” David M. Studdert, Michelle Mello, et al., “Claims, Errors, and Compensation Payments in Medical Malpractice Litigation,” *New England Journal of Medicine*, May 11, 2006.

The authors found:

- 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.
- Eighty percent of claims involved injuries that caused significant or major disability or death.
- “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.”
- “Disputing and paying for errors account for the lion’s share of malpractice costs.”
- “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.”

### Jury verdicts correspond well with the severity of injuries.

- Patients do not win large jury awards for insignificant claims. In 2005, more than 64 percent of payments involved death or significant injury, less than one-third were for insignificant injury, and less than three percent were million-dollar verdicts. Public Citizen, Congress Watch, *The Great Medical Malpractice Hoax: NPDB Data Continue to Show Medical Liability System Produces Rational Outcomes*, (January 2007).
- According to Duke University Law Professor Neil Vidmar, who has extensively studied medical malpractice cases, “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.” Testimony of Neil Vidmar, Russell M. Robinson, II Professor of Law, Duke Law School before The 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 10.