

The Medical Malpractice “Crisis” in North Carolina: Fantasy and Reality

by Burton Craige



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The insurance industry tells us that we are in the midst of a grave “medical malpractice crisis.” Every day, newspapers recycle claims that doctors are “abandoning their profession” because of “skyrocketing insurance premiums,” and that “runaway juries” are routinely subjecting innocent doctors and hospitals to “outrageous verdicts.” The villain in these stories is invariably the avaricious lawyer who makes his living filing “frivolous lawsuits.”

What makes these stories so remarkable is that they are utterly contrary to the facts in North Carolina. The campaign for “malpractice reform” is fueled by four myths, none of which have any basis in reality.

Myth No. 1 Doctors are leaving North Carolina because of malpractice lawsuits and high insurance premiums.

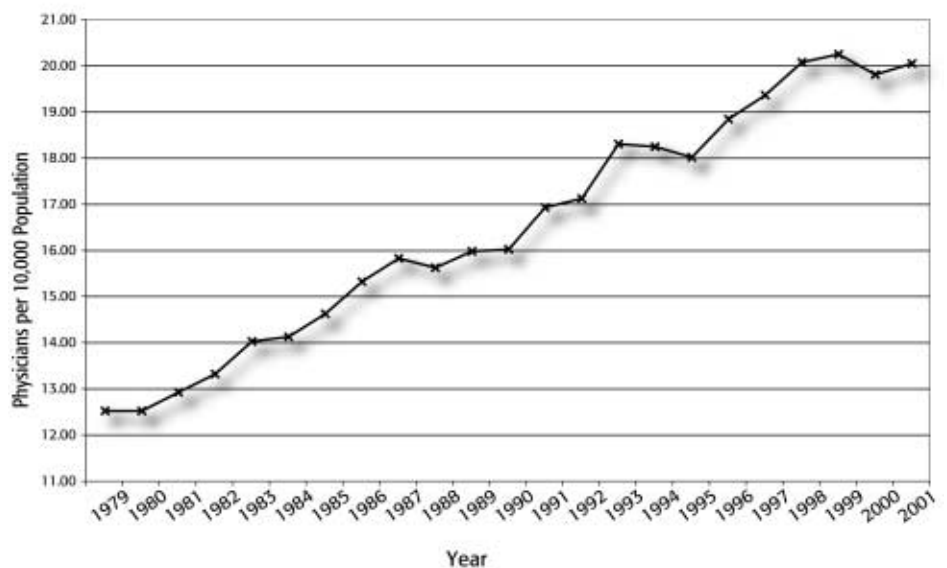
In fact, the number of physicians per person in North Carolina has risen steadily, from 16 doctors per 10,000 population in 1990 to

20 per 10,000 population in 2001, a 25 percent increase in 11 years.¹

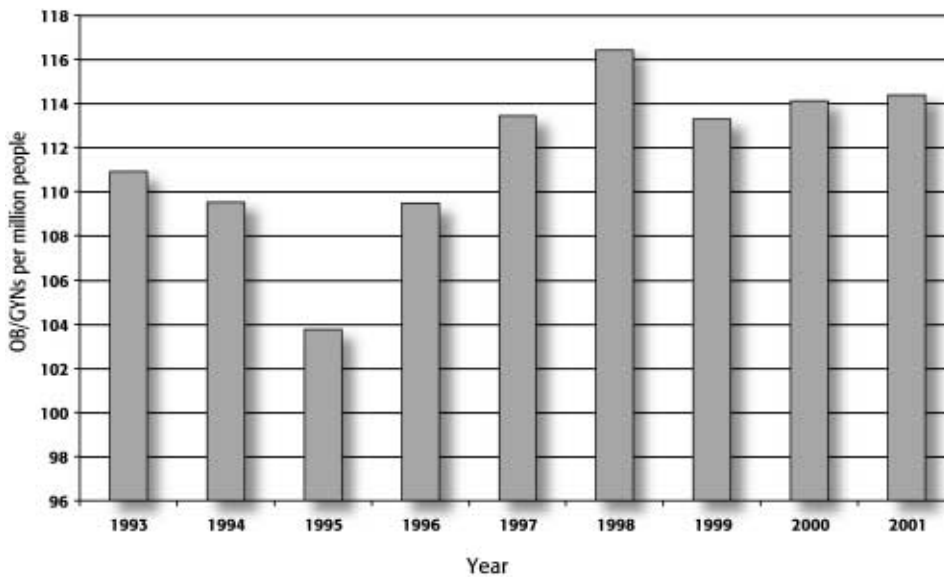
We hear claims that obstetricians are leaving North Carolina in droves because of malpractice lawsuits. Let’s look at the facts. From 1995 to 2001, the population of North Carolina increased from 7.2 million to 8.2 million, an increase of 2.3 percent per year.² During the same period, the number of obstetricians practicing in North Carolina increased from 747 to 937, an annual rate of increase of 4.2 percent.³ In other words, the number of obstetricians in North Carolina has grown almost twice as fast as the state’s population.

The lobbyists for the insurance industry say that North Carolina will attract more doctors if we copy the malpractice “reforms” enacted in California in 1975. Those “reforms” drastically curtailed patients’ rights to pursue malpractice claims. But the number of doctors per capita in California was stagnant in the 1990’s, while North Carolina’s population of doctors grew rapidly

North Carolina Physicians per 10,000 Population



North Carolina OB/GYNs per million people



during that same time period.⁴ Doctors are coming to North Carolina, and abandoning California. Why should we follow California's example?

Myth No. 2
Malpractice insurance premiums are skyrocketing.

In fact, for many years, malpractice premiums in North Carolina have increased more slowly than the rate of increase patients have faced in the cost of medical services. From mid-1989 through the end of 2002, the premiums of Medical Mutual of North Carolina—the largest writer of malpractice insurance in the state—increased at an annual rate of 3.9 percent.⁵ During the same period, the cost of medical services, including physicians' services, increased at an annual rate of 5.4 percent.⁶

In 2002, Medical Mutual increased its premiums by 12 percent to compensate for a lower rate of return on its investments. This increase is modest in comparison with premium hikes consumers have faced in recent years for property, casualty, and health insurance.⁷ Medical malpractice insurers, like other insurance companies, tend to reduce premiums when their investment income yields high returns, and increase premiums when investment income declines.⁸ When the stock market goes down, premiums go up.

Myth No. 3:
An explosion of frivolous lawsuits.

Three years ago, the Institute of Medicine concluded that between 44,000 and 98,000 Americans die every year in hospitals because of medical errors.⁹ Based on those statistics, it is estimated that 1,200 to 2,800 North Carolinians die each year as a result of medical mistakes.¹⁰ And the number of non-fatal injuries caused by medical mistakes far exceeds the number of deaths.¹¹ Yet, in North Carolina, only 608 medical malpractice lawsuits were filed in 2002—just a fraction of the thousands of patients injured or killed every year by medical errors.¹²

In view of this epidemic of medical mistakes, it is striking that so few lawsuits are filed. With brutal efficiency, the legal system in North Carolina discourages patients from filing malpractice claims. Malpractice cases are notoriously expensive and

difficult to win. Rule 9(j), a procedural hurdle that applies only to malpractice cases, forces the plaintiff to obtain a qualified expert witness who will vouch that the claim has merit before the patient can file suit. Injured patients face the daunting task of finding experts willing to break the code of silence and testify against a colleague. The "routine" malpractice case requires upwards of \$50,000 in litigation expenses. If the patient loses, neither the patient nor attorney is paid. Recognizing these formidable obstacles, lawyers know they must file well-founded claims.

Myth No. 4:
Outrageous jury verdicts.

North Carolina juries are remarkably conservative in medical malpractice cases, consistently favoring the health care provider over the patient. Studies have repeatedly confirmed what lawyers know from experience: malpractice plaintiffs in North Carolina win at trial less than 20 percent of the time.¹³ In the rare case a plaintiff obtains a favorable verdict, the amount of the award reflects the severity of the injuries and the cost of treatment. If the jury's award is excessive and unsupported by the evidence, the trial judge will throw out the verdict and order a new trial.

If there were any substance to the claim of "runaway juries" and "outrageous verdicts," one would expect to hear examples cited by lobbyists for malpractice "reform." Their silence speaks volumes. In North Carolina, a jury only awards substantial damages to a malpractice plaintiff if there is powerful evidence to support the award.

Fueling the sense of "crisis," members of the media report uncritically the most hyperbolic claims of spokesmen for the insurance industry. In October 2001, the *News and Observer* quoted a senior official of Medical Mutual as saying that "the dol-

Medical Malpractice Actions Filed in North Carolina Drop in 2002

Year	Med Mal Cases Filed	Change from Previous Year	% of Change from Previous Year	Civil Filings: Superior and District Courts
1998	556	NA	NA	200,107
1999	586	30	5.4%	202,994
2000	627	41	7.0%	215,651
2001	678	51	8.1%	219,424
2002	608	-70	-10.3%	NA

lar amount of awards is up dramatically, to about \$4 million per claim."¹⁴ However, in 2001, Medical Mutual's figures show a severity (average payout per claim, including defense costs) of only \$61,580. Contrary to the dire pronouncements of company spokesmen, Medical Mutual's claim severity has been stable in recent years, increasing only 4.1 percent per year from 1999 to 2001.¹⁵ Meanwhile, victims of malpractice and other consumers faced 4.5 percent annual increases in the cost of medical care services.¹⁶

Advocates for malpractice "reform" claim that the tort system increases medical costs by encouraging doctors to practice "defensive medicine" to avoid lawsuits. That argument is a red herring. In these days of managed care, insurance companies only pay for procedures of proven efficacy. If a procedure is demonstrably effective and increases patient safety, a conscientious physician should offer that option to her patient, just as she would to a member of her own family. That is simply good medical care, not "defensive medicine."

The legal system promotes patients' safety by holding doctors, hospitals and nursing homes accountable for their mistakes. The insurance industry is now proposing radical measures to prevent patients from seeking compensation for their injuries. Dismantling the mechanism that protects patients' safety will only increase the risk of injury by medical errors.

North Carolina should adopt measures that promote patient safety and access to the health care system:

- There should be mandatory reporting and public disclosure of medical errors. Even though a small group of doctors is responsible for most malpractice, North Carolina consumers have no access to information about a physician's performance.
- Malpractice insurance should be based on the individual physician's claims experience—good doctors should pay lower premiums than bad doctors. By failing to adjust premiums based on performance, current insurance practices do not promote good medicine.
- The North Carolina Medical Board has been passive and ineffective in identifying and sanctioning incompetent physicians. The Medical Board should be reconstituted so that it is independent of the North Carolina Medical Society, the doctors' trade association. Proceedings of the Medical Board should be disclosed to the public.
- The legislature should impose restrictions on the hours that medical residents work. Too often in teaching hospitals, patients receive substandard care from overworked, exhausted doctors-in-training.
- State regulation of nursing homes must be strengthened so that vulnerable residents are not subjected to abuse and neglect.

As consumers pay more for health care, they deserve more protection from medical errors, not less. We should work together to prevent malpractice by identifying and sanctioning incompetent doctors, ensuring adequate staffing in hospitals and nursing homes, and implementing effective quality assurance programs. ■

¹ NORTH CAROLINA HEALTH PROFESSIONS DATA SYSTEM, Cecil G. Sheps Center for Health Services Research, University of North Carolina at Chapel Hill.

² *Id.*

³ *Id.*

⁴ U.S. CENSUS BUREAU, STATISTICAL ABSTRACT OF THE UNITED STATES.

⁵ Medical Mutual Insurance Company of North Carolina, *Rate/Rule Filing No. NC-R-020004, Exhibit 6*, NC Department of Insurance tracking number PC054253.

⁶ UNITED STATES BUREAU OF LABOR STATISTICS, CONSUMER PRICE INDEX, MEDICAL CARE SERVICES 1989–2002, <<http://www.bls.gov>>.

⁷ Joseph B. Treaster, *Insurance Rates Are Rising Sharply Across U.S.*, NEW YORK TIMES, October 25, 2001; Albert B. Crenshaw, *A Move to Halt the Premium Seesaw*, WASHINGTON POST, September 8, 2002.

⁸ Christopher Oster and Rachel Zimmerman, *Insurer's Price Wars Contributed to Doctors Facing Soaring Costs*, WALL STREET JOURNAL, June 24, 2002.

⁹ LINDA T. KOHN, JANET M. CORRIGAN AND MOLLA S. DONALDSON, EDs., *TO ERR IS HUMAN: BUILDING A SAFER HEALTH SYSTEM*, (Institute of Medicine, National Academy Press, Washington, D.C.) (2000).

¹⁰ *Medical Misdiagnosis*, PUBLIC CITIZEN'S CONGRESS WATCH, January 2003.

¹¹ *Views of Practicing Physicians and the Public on Medical Errors*, THE NEW ENGLAND JOURNAL OF MEDICINE, Volume 347:1933-1940, Number 24, December 12, 2002 (Reporting that four out of 10 Americans and one out of three doctors say that they or their family members have been the victims of a preventable medical error—and 10 percent of doctors say a family member died as a consequence.)

¹² North Carolina Administrative Office of the Courts.

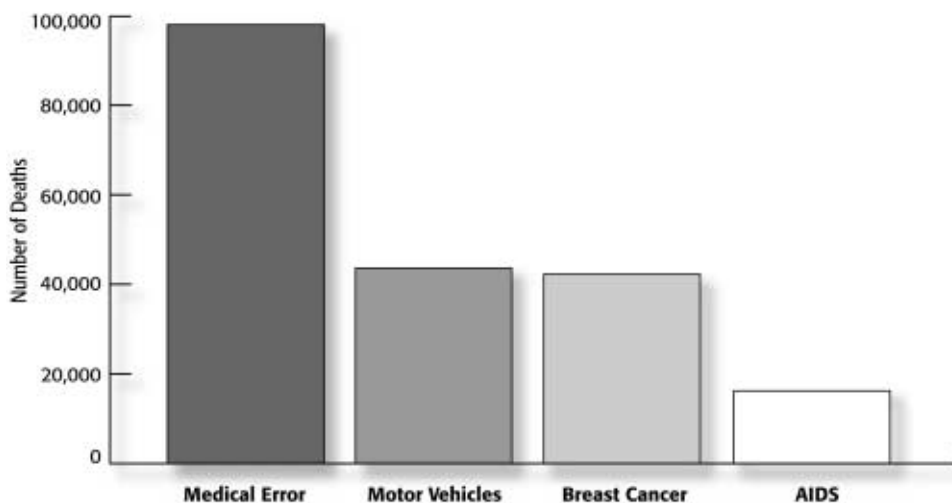
¹³ See, e.g., Peeples, Harris & Metzloff, *The Process of Managing Medical Malpractice Cases*, 37 WAKE FOREST LAW REVIEW 877, 887–88, 899 (2002) (Table 6) (plaintiff won 16.7 percent of cases tried); NEIL VIDMAR, *MEDICAL MALPRACTICE AND THE AMERICAN JURY*, 39 (University of Michigan Press) (1995).

¹⁴ Jean P. Fisher, *Malpractice Insurance Soars*, RALEIGH NEWS AND OBSERVER, October 18, 2001.

¹⁵ Analysis by Robert J. Walling, FCAS, MAAA, based on Medical Mutual Insurance of North Carolina's 2001 Annual Statement.

¹⁶ UNITED STATES BUREAU OF LABOR STATISTICS, CONSUMER PRICE INDEX, MEDICAL CARE SERVICES 1999–2001, <<http://www.bls.gov>>.

Medical Error – A Leading Cause of Death in US in 1997



Source: *To Err is Human*: National Academy of Sciences, 2000