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Doctors and Other Health Professionals Report that Fear of Malpractice Has a Big, and Mostly Negative, Impact on Medical Practice, Unnecessary Defensive Medicine and Openness in Discussing Medical Errors

As the debate about possible malpractice reform heats up as a result of President Bush's State of the Union address, a new survey of physicians, nurses and hospital administrators provides powerful evidence that the medical liability system needs fixing. Very large numbers of medical doctors report that they personally order more tests, refer more patients, prescribe more medication and suggest biopsies more often than is necessary because of concerns about malpractice. Large majorities of physicians, nurses and hospital administrators believe that defensive medicine leads to the provision of unnecessary or excessive care. Most doctors think that fear of liability often discourages open discussions of ways to reduce medical errors and is a primary reason why hospitals do not share the results of inquiries into patient injury cases.

Large majorities of doctors and hospital administrators do not trust the current justice system to achieve reasonable results, and large majorities of doctors, nurses and hospital administrators favor replacing the current lay court system with special medical courts staffed by medical experts.

These are some of the results of a nationwide Harris Interactive survey of 300 practicing physicians, 100 hospital administrators and 100 nurses interviewed in March 2002. The survey was conducted for **Common Good**, an organization that advocates the reform of the civil justice system, including malpractice reform.

Defensive Medicine

The survey found that, because of the fear of liability:

- 79% of physicians say they order more tests than are medically needed.
- 74% of physicians say they refer patients more often than they would if based only on their professional judgment.
- 51% of physicians suggest invasive procedures such as biopsies more often than they would if based only on their professional judgment.
- 41% of physicians prescribe medications more often than they believe they are medically needed.

Overall, majorities of physicians (94%), nurses (66%) and hospital administrators (84%) believe that unnecessary or excessive care is provided because of the fear of malpractice. While only minorities (38% of doctors, 18% of nurses, and 20% of hospital administrators) believe this happens "very often," only small minorities believe that this is rare.

The survey also found that 43% of medical doctors, now practicing, say that they have considered leaving medicine because of the malpractice liability system.

TABLE 1

Impact Of Liability Concerns On Physicians Personal Behavior

“Do concerns about malpractice liability ever cause you to...?”

Base: All Physicians

	“Yes” %
I order more tests than I would based only on professional judgement of what is medically needed	79
I prescribe more medications such as antibiotics than I would based only on professional judgement of what is medically needed	41
I refer patients to specialists more often than I would based only on professional judgement	74
I suggest invasive procedures such as biopsies to confirm diagnoses more often than I would based solely on my professional judgement	51

TABLE 2

Unnecessary Or Excessive Care Provided Due To Fear Of Medical Liability

“Based on your experience, how often do you think unnecessary or excessive care is provided because of the fear of medical liability?”

	Physicians %	Nurses %	Hospital Administrators %
Very often/Sometimes (NET)	94	66	84
Very often	38	18	20
Sometimes	56	48	64
Rarely/Never (NET)	6	32	15
Rarely	5	30	13
Never	*	2	2
Not sure	-	2	1

*= Less than 0.5%

Impact on open discussion of medical errors

The survey also leaves little doubt that fear of malpractice has a chilling effect on the discussion of medical errors and how to prevent them.

Most physicians (59%), but only minorities of nurses (33%) and hospital administrators (37%) say that liability concerns are a *primary* reason why hospitals do not share the results of inquiries into patient injuries.

Furthermore most physicians (59%), but only minorities of nurses (22%) and hospital administrators (25%) believe that fear of liability discourages medical professionals from discussing and thinking of ways to reduce medical errors.

TABLE 3

Impact Of Fear Of Liability On Sharing Patient Inquiry Results

“How significant a factor do you think liability concerns are in hospitals not sharing the results of inquiring into patient injury cases?”

	Physicians %	Nurses %	Hospital Administrators %
Those saying “a primary reason”	59	33	37

TABLE 4

Impact On Discussion About Medical Errors

“Generally speaking, how much do you think that each of the following discourages medical professionals from openly discussing and thinking about ways to reduce medical errors?”

Those who say “a lot”	Physicians	Nurses	Hospital Administrators
	%	%	%
Fear of liability	59	22	25
Not wanting to upset or criticize a colleague	34	24	23
The environment in your hospital	16	14	3

Support for a new medical court system

Only small minorities of physicians (17%) and hospital administrators (28%) – but almost half (48%) of nurses – feel that they can trust the justice system to achieve reasonable results.

As a result, very large majorities of doctors (94%), nurses (75%) and hospital administrators (81%) favor medical courts “presided over by independent medical professionals and other experts.”

TABLE 5

Trust The Justice System In The Event Of A Lawsuit

“If sued, do you agree or disagree that physicians can trust the current system of justice to achieve a reasonable result?”

	Physicians	Nurses	Hospital Administrators
	%	%	%
Strongly/Somewhat Agree (NET)	17	48	28
Strongly agree	2	5	8
Somewhat agree	16	43	20
Somewhat/Strongly Disagree (NET)	83	45	72
Somewhat disagree	40	28	32
Strongly disagree	42	17	40
Not sure	-	7	-

TABLE 6

Views On Change To Independent Medical Court System

“Instead of the current lay court system, would you favor or oppose a medical court presided over by independent medical professionals and other experts that would have authority to review and decide injury cases?”

	Physicians	Nurses	Hospital Administrators
	%	%	%
Strongly/Somewhat Favor (NET)	94	75	81
Strongly favor	49	24	40
Somewhat favor	45	51	41
Somewhat/Strongly Oppose (NET)	6	18	17
Somewhat oppose	5	11	7
Strongly oppose	1	7	10
Not sure	-	7	-

This is also a state issue

While President Bush has made malpractice reform an important part of his health care agenda, this is also an issue which is getting the attention of many state governments. According to *American Medical News*, “nearly two dozen state legislatures expect to consider tort reform bills aimed at easing problems with the availability and affordability of medical liability insurance.” States where the most action is occurring include Massachusetts, Pennsylvania, Texas and West Virginia. A common element in many state legislative proposals is a cap of \$250,000 on non-economic damages.

Another Harris Interactive survey of 289 physicians in West Virginia, conducted in October and November 2002, provides powerful arguments in favor of the need for malpractice liability reform there. Our findings include:

- The overwhelming majority of physicians in that state (90%) believes that there is a shortage of doctors generally in West Virginia and 95% believe that this is particularly acute in some high-risk specialties.
- Malpractice liability tops the list as the most important single reason for the shortage of doctors. Virtually all physicians believe it is a reason for the shortage.
- Most West Virginia physicians believe that patients are having trouble getting access to trauma services (83%) and OB/GYN services (80%). Furthermore, most physicians believe that hospitals are having trouble recruiting certain specialties, in particular, OB/GYNs and surgeons.
- Most physicians (73%) think that the shortages would be alleviated by changes in the malpractice liability system.
- Only a tiny minority of physicians in West Virginia (6%) thinks that they can trust the current justice system to achieve a reasonable result. Furthermore, most physicians (95%) think that the malpractice system limits the ability of doctors to provide the highest quality of medical care.
- As a result, many physicians have considered either leaving the state (65%), retiring early (41%) or leaving the practice of medicine altogether (30%). Overwhelming majorities of physicians know of other doctors who have done these things.

Other data strongly suggest that West Virginia is not typical and that the state liability system is much worse there than in most other states. Another Harris Interactive study of 824 senior corporate litigators with experience of the courts of different states ranked West Virginia's state liability system 49th out of 50 (only Mississippi was ranked worse). This survey showed very big differences between the liability systems of different states.

West Virginia received exceptionally poor marks on judges' impartiality and competence, juries' fairness, treatment of tort, contract and class action suits, punitive damages, timeliness of summary judgments, and dismissal and discovery.

Putting the results in context

Physicians and other health professionals are often the targets of malpractice suits and no doubt some people will see these results as special pleading by those with a vested interest in malpractice reform. Nevertheless this evidence for the need for malpractice reform seems to us to be powerful, even if one discounts the special interests of those surveyed.

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Methodology

The Harris Interactive survey conducted for **Common Good** was based on interviews with representative samples of 500 medical professionals including 300 physicians, 100 nurses and 100 hospital administrators nationwide. The interviews were conducted by telephone as well as online between March 4 and March 20, 2002.

The Harris Interactive survey commissioned by **The U.S. Chamber Institute for Legal Reform** was conducted from October 2 through November 6, 2002. A representative sample of 289 practicing physicians in West Virginia were surveyed by mail.

Another Harris Interactive survey for **The U.S. Chamber Institute for Legal Reform**, conducted via telephone in November and December 2001, measured responses of a representative sample of 824 senior corporate litigators within the United States who had experience in the courts of different states.

About Harris Interactive®

Harris Interactive (www.harrisinteractive.com) is a worldwide market research and consulting firm best known for *The Harris Poll*®, and for pioneering the Internet method to conduct scientifically accurate market research. Headquartered in Rochester, New York, U.S.A., Harris Interactive combines proprietary methodologies and technology with expertise in predictive, custom and strategic research. The Company conducts international research through wholly owned subsidiaries—London-based **HI Europe** (www.hieurope.com) and Tokyo-based **Harris Interactive Japan**—as well as through the Harris Interactive Global Network of local market- and opinion-research firms, and various U.S. offices. EOE M/F/D/V

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