

MEDICAL MALPRACTICE LITIGATION IN STATE COURTS

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In early 2011, policymakers focused renewed attention on the topic of medical malpractice reform at the national level. Bills to cap noneconomic damages, tighten the deadline for filing a medical malpractice claim, limit attorneys' fees, and impose other restrictions on medical malpractice lawsuits in state and federal courts were introduced in both the House and the Senate. In his State of the Union address, President Obama also mentioned a willingness to consider medical malpractice reform as a means of reducing health care costs.

What is a Medical Malpractice Lawsuit?

In a medical malpractice lawsuit, a patient alleges that he or she was injured due to the negligence of a physician or other health care provider. Medical malpractice claims typically involve complex evidence, including expert testimony on the standard of care as well as the nature and cause of the patient's injuries. The costs of litigation can be high for plaintiff patients as well as for defendant physicians.

Tort liability for medical malpractice is designed to serve several functions: to compensate injured patients for their harm, to encourage doctors to take appropriate safety precautions and avoid undue risk in treating their patients, and to provide a forum in which negligent physicians can be held publicly accountable. The litigation process can also provide a means for patients and their families to gain more information about the causes and circumstances of medical injuries. Critics of the current medical liability system argue that there are too many medical malpractice lawsuits, that verdicts in these cases are excessive and arbitrary, that fear of liability prompts doctors to order unnecessary tests and procedures, and that rising malpractice insurance premiums are increasing the cost of health care and driving doctors to leave their practices.

This issue of *Caseload Highlights* presents data on the scope, characteristics, and outcomes of medical malpractice litigation in state courts. Caseload data are taken from the Court Statistics Project; trial data are from the 2005 Civil Justice Survey of State Courts. The data reveal that medical malpractice lawsuits are uncommon and declining in number, that juries decide against medical malpractice plaintiffs more than three-quarters of the time, and that damage awards in medical malpractice cases are generally proportionate to the severity of the injury.

Medical Malpractice Lawsuits Are Rare

The table below compares medical malpractice case filings to automobile tort filings in the general jurisdiction courts of 12 states during 2008. In each state, medical malpractice cases represented well under 2 percent of all incoming civil cases, and less than 8 percent of incoming tort cases. Only in New York and New Jersey did the number of medical malpractice filings exceed 1,000.

In 1999, the Institute of Medicine estimated that preventable medical errors in hospitals kill between 44,000 and 98,000 Americans each year—more than motor vehicle accidents, breast cancer, or AIDS. These figures do not include deaths due to medical negligence that occurs in doctors’ offices, outpatient clinics, and other non-hospital settings. However, despite the widespread prevalence of medical negligence, medical malpractice lawsuits are far less common than motor vehicle tort lawsuits. In all jurisdictions but Puerto Rico, incoming automobile tort caseloads ranged from 7 to 38 times the size of incoming medical malpractice caseloads.

Incoming Medical Malpractice and Automobile Tort Caseloads in General Jurisdiction Courts in 12 States, 2008

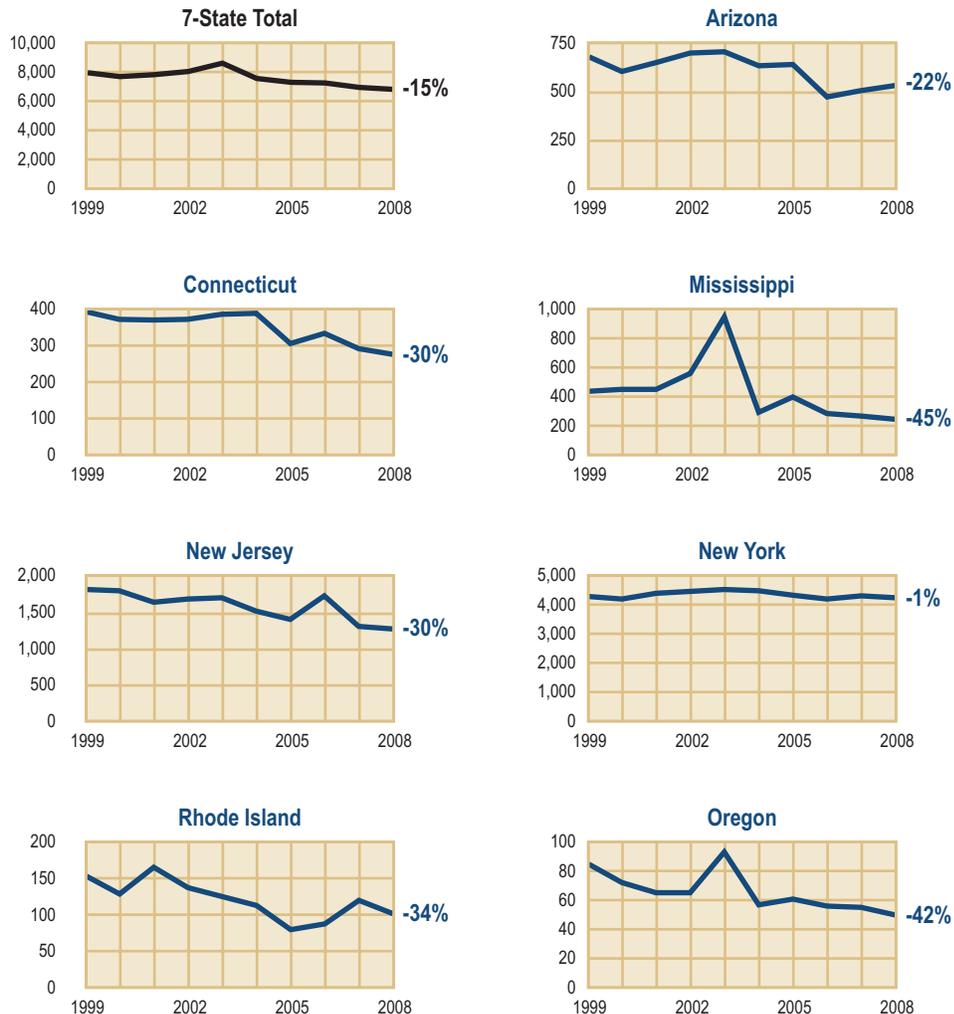
State	Incoming Auto Tort Cases		Incoming Medical Malpractice Cases		Medical Malpractice Cases as a Percentage of:	
	Total	Population (per 100k)	Total	Population (per 100k)	Tort Caseload	Civil Caseload
New York	28,744	147.5	4,195	21.5	1.1%	7.4%
New Jersey	28,356	326.6	1,249	14.4	.1%	2.3%
Puerto Rico	1,528	38.6	496	12.5	.4%	6.0%
Rhode Island	1,178	112.1	100	9.5	.8%	3.4%
Michigan*	8,946	89.4	916	9.2	1.6%	5.9%
Kansas	1,927	68.8	248	8.9	.1%	7.4%
Arizona	7,101	109.2	524	8.1	.6%	4.7%
Mississippi	1,595	54.3	235	8.0	.9%	5.7%
Connecticut	10,335	295.2	272	7.8	.1%	1.8%
Iowa	1,906	63.5	168	5.6	.1%	4.7%
Wisconsin	4,440	78.9	139	2.5	< .1%	1.9%
Minnesota	N/A	N/A	37	.7	.7%	< .1%
Median		89.4		8.5	.3%	4.7%

* MI automobile tort data do not include Court of Claims.
Notes: States in **bold** have a unified court system. N/A = not available.

Medical Malpractice Claims Are Becoming Less Frequent

Contrary to the claims of some tort reform advocates, medical malpractice caseloads have been decreasing over time. The graphs below track the total number of incoming medical malpractice cases over a ten-year period in the seven states with available data. New York is the only state in which medical malpractice filings remained nearly level over this period; in the remaining six states, filings fell by between 22 and 45 percent. In comparison, total tort filings in the 13 states with available data fell by 25 percent over the same period, while contract filings increased by 63 percent (not shown in a graph).

Incoming Medical Malpractice Cases in General Jurisdiction Courts in 7 States, 1999-2008



Most Medical Malpractice Plaintiffs Lose at Trial

The table below compares basic statistics for medical malpractice trials and other types of personal injury trials that took place in state courts during 2005. These statistics are national estimates based on data from the 2005 Civil Justice Survey of State Courts. In 2005, there were an estimated 2,449 medical malpractice trials in state courts, as compared with more than 12,000 other personal injury trials. A jury was the finder of fact in virtually all medical malpractice trials, whereas 8 percent of other personal injury trials were bench trials. Due in part to the complexity of the evidence in medical malpractice cases, medical malpractice trials tended to last more than twice as long as other personal injury trials.

Medical Malpractice and Other Personal Injury Trials in State Courts, 2005

	<u>Medical Malpractice Trials</u>	<u>Other Personal Injury Trials</u>
Total Trials	2,449	12,360
Jury Trials	99%	92%
Plaintiff Win Rate	23%	59%
Median Damages Awarded to Plaintiff Winners	\$400,000	\$19,840
Median Trial Length (Days)	5	2

At trial, medical malpractice plaintiffs were less likely to prevail than other tort plaintiffs, but the few medical malpractice plaintiffs who did recover damages tended to receive larger awards than other successful personal injury plaintiffs. The plaintiff win rate for medical malpractice was 23 percent, less than half the plaintiff win rate for other personal injury cases. The median award for successful medical malpractice plaintiffs was \$400,000, as compared with \$19,840 for other successful personal injury plaintiffs.

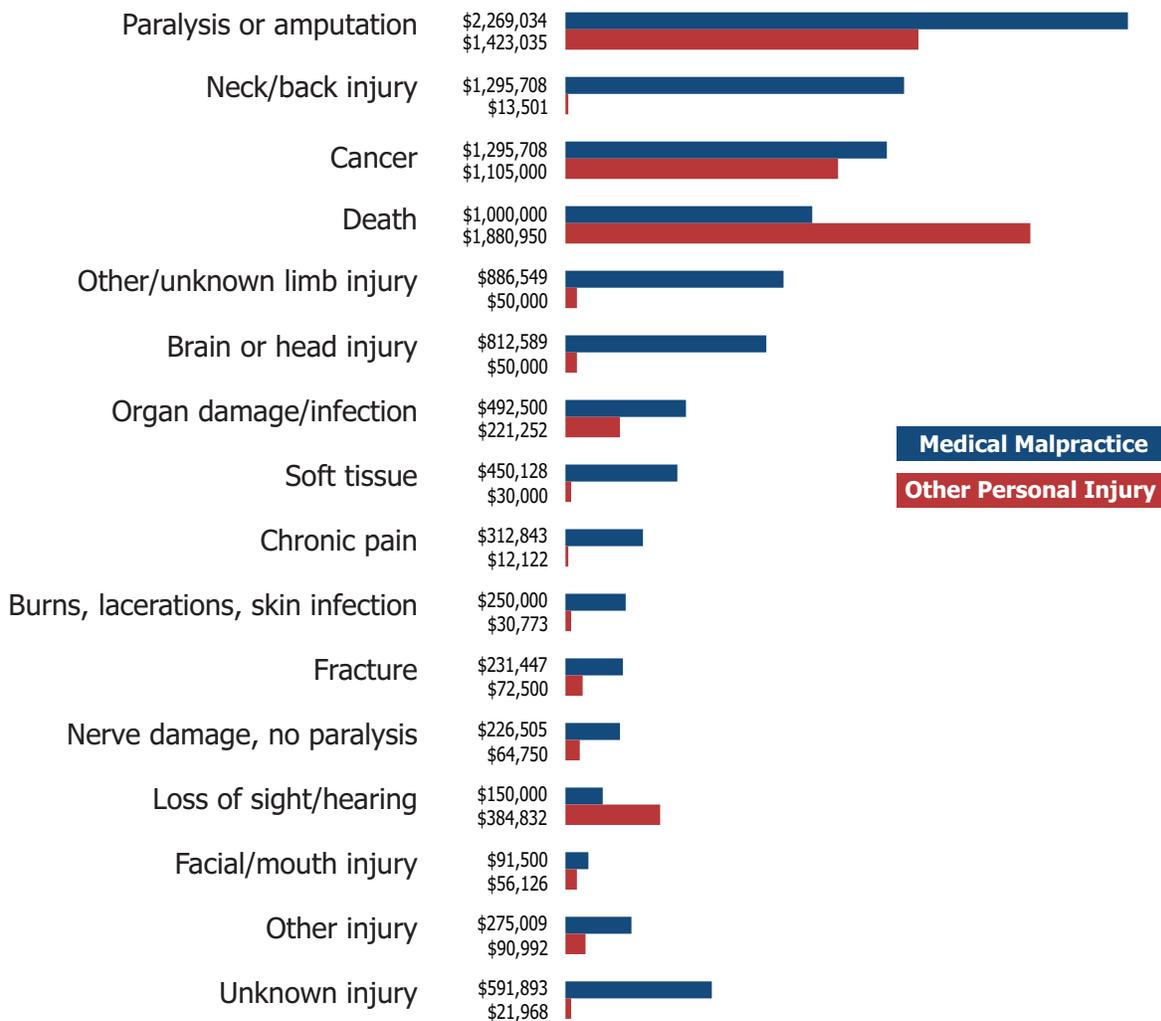
The larger damage awards in medical malpractice cases do not necessarily imply that juries are acting irrationally or being overly generous to medical malpractice plaintiffs. First, damage awards in medical malpractice cases are generally proportionate to the severity of the injury. Second, the high cost of pursuing a medical malpractice claim means that only those cases in which the plaintiff's injury is severe and the potential damages very large are likely to make it to trial. Because other types of tort cases are less costly to litigate, lower-value cases of these types are more likely to be filed and taken to trial than are low-value medical malpractice cases.

Damage Awards Are Proportionate to Injuries

The chart below displays the median damage award to prevailing plaintiffs by the primary injury claimed for medical malpractice and other personal injury trials in the 2005 Civil Justice Survey of State Courts data set.* The most serious injuries, such as paralysis and cancer, received the largest awards. Consistent with other research, in medical malpractice cases death tended to be compensated somewhat less highly than some other serious injuries such as paralysis, in part because these injuries often require costly lifelong care. Less serious injuries, such as fractures and dental injuries, received smaller awards. Strikingly, the median damage award for death in medical malpractice cases was nearly 50 percent *smaller* than the median award in other wrongful death cases.

* Due to the small number of cases within some injury categories, the data were not weighted to national estimates for purposes of the analysis in this section and the following section.

Median Award by Case Type and Primary Injury Claimed, Plaintiff Wins

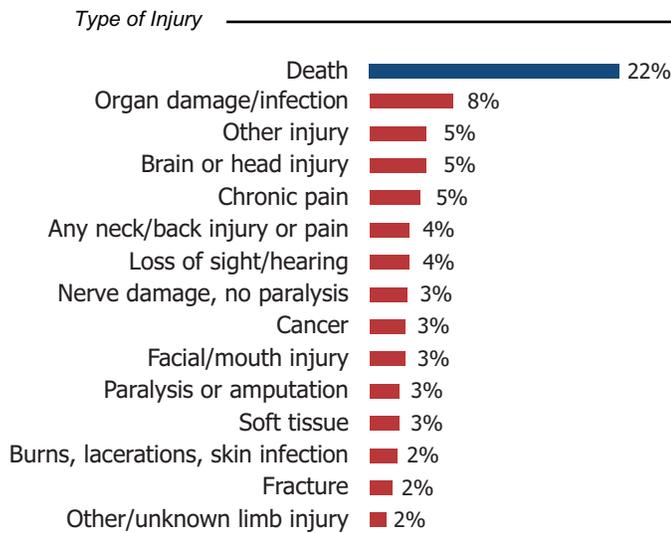


Medical Malpractice Lawsuits Involve Severe Injuries

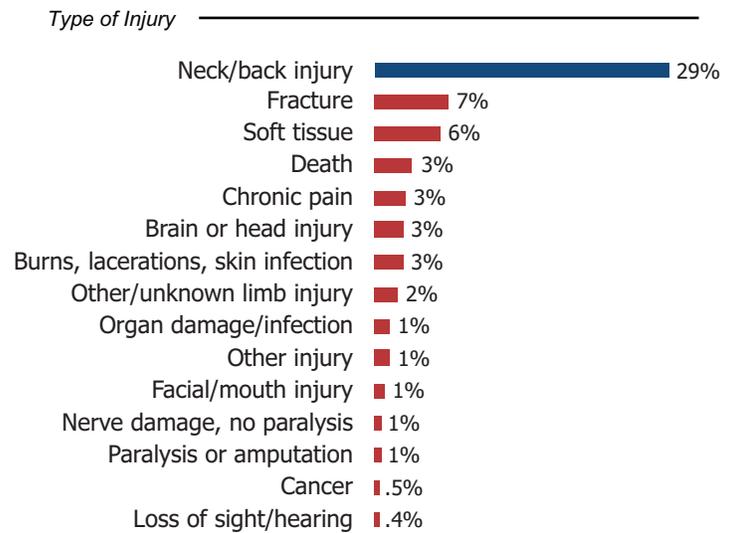
Although the 2005 trial data show that successful medical malpractice plaintiffs tended to receive larger damage awards than other personal injury plaintiffs, the injuries in medical malpractice cases also tended to be more severe. The following charts compare the distribution of plaintiff’s primary injury for medical malpractice trials and other personal injury trials. The most common injury in medical malpractice cases was death, accounting for 22 percent of medical malpractice trials as opposed to 3 percent of other personal injury trials. Other serious injuries, such as paralysis and cancer, were also more frequently claimed in medical malpractice cases than in other personal injury cases. Among personal injury cases other than medical malpractice, neck or back injuries—mostly “whiplash”-type injuries, such as sprains, strains, and chronic pain—made up the largest share of claims.

Primary Injury in Medical Malpractice and Other Personal Injury Cases with Plaintiff Winners

In **medical malpractice** cases, death is by far the most frequent type of injury



In **other personal injury** cases, neck and back injuries occur most frequently



Note: Type of injury was unknown in 27% of medical malpractice cases and in 37% of other personal injury cases.

Within each injury category, the injuries in medical malpractice cases also tended to be more severe than injuries in other types of cases. For example, in the paralysis/amputation category, 100 percent of medical malpractice cases in which the plaintiff received an award involved paralysis caused by injury to the spine or brain, whereas the primary injury in 75 percent of non-medical malpractice cases in this category was to an arm, leg, hand, or foot. In the brain/head injury category, all injuries alleged by successful medical malpractice claimants were permanent, whereas 43 percent of other personal injury cases in this category involved temporary injuries. For burns, lacerations, skin infections, and other skin injuries, all winning medical malpractice patients suffered permanent injuries, but 56 percent of other winning plaintiffs alleged temporary injuries. The relative severity of the injuries in medical malpractice cases appears to be a major factor behind the greater magnitude of the awards in these cases.

Conclusion: A Medical Malpractice Litigation Crisis?

The data on medical malpractice case filings and trials in state courts reveal little evidence of a “litigation crisis.” Courts do not appear to be overwhelmed by a flood of medical malpractice lawsuits. As data cited earlier from the Institute of Medicine show, very few injured patients ever file suit and even fewer take their cases to trial. Only a small minority of medical malpractice plaintiffs win at trial. Although median damage awards to successful plaintiffs are higher in medical malpractice cases than in other personal injury cases, the injuries in medical malpractice cases tend to be more severe.

About the Data

Since 1975, the Court Statistics Project has collected state-level data on incoming, pending, and outgoing caseloads in the trial courts of all 50 states, the District of Columbia, and Puerto Rico. Data are reported directly by the states or compiled from publicly available sources such as annual reports.

The 2005 Civil Justice Survey of State Courts data set includes case-level information on all tort, contract, and real property trials that took place during 2005 in the state general jurisdiction courts of a nationally representative sample of 156 urban, suburban, and rural counties. Civil Justice Survey data were collected directly from court records.

Both the Court Statistics Project and the Civil Justice Survey of State Courts are funded by the Bureau of Justice Statistics and conducted by the National Center for State Courts.



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Court Statistics Project

Since 1975, the Court Statistics Project (CSP) has provided a comprehensive analysis of the work of state courts by gathering caseload data and creating meaningful comparisons for identifying trends, comparing caseloads, and highlighting policy issues.

The CSP is supported by the Bureau of Justice Statistics and obtains policy direction from the Conference of State Court Administrators. A complete annual analysis of the work of the state trial and appellate courts will be found in *Examining the Work of State Courts: An Analysis of 2008 State Court Caseloads*.