

**CUTTING THROUGH THE RHETORIC ON
MEDICAL MALPRACTICE LIABILITY REFORM**

What the President Says:	The Facts:
<p>“Lawsuits are driving docs out of the practice, which means there's less availability [of medical care].”¹</p>	<p>An August 2003 General Accounting Office study found that many of the claims of medical malpractice premiums driving doctors out of business and making health care inaccessible were “not substantiated or did not affect access to health care on a widespread basis.”²</p>
<p>“One of the major cost drivers in the delivery of health care are these junk and frivolous lawsuits.”³</p>	<p>A January 2004 Congressional Budget Office study reported that, “Malpractice costs account for less than 2 percent of [health care] spending” and that caps would make essentially no difference in health care costs or health insurance premiums; a bill with caps on non-economic damages and a ban on punitive damages “would lower health care costs by only 0.4 percent to 0.5 percent, and the likely effect on health insurance premiums would be comparably small.”⁴</p>
<p>“One of the reasons people are finding their premiums are up, and it's hard to find a doc these days, is because frivolous and junk lawsuits are threatening medicine across the country. And there's a lot of them, people just filing these suits. I call them junk suits because they don't have any merit.”⁵</p>	<p>While a July 2003 GAO study of the causes of malpractice insurance increases found that malpractice awards have contributed to increased premiums, it noted that, “A lack of comprehensive data at the national and state levels on insurers’ medical malpractice claims and the associated losses prevented us from fully analyzing the composition and causes of those losses.”⁶ It also attributed increased premiums to insurance companies’ falling investment returns and the normal business cycle.</p>

¹ Remarks by President George W. Bush at Baptist Health Medical Center in Little Rock, Arkansas; Jan. 26, 2004.

² General Accounting Office, *Medical Malpractice: Implication of Rising Premiums on Access to Health Care*, GAO-03-836 (Aug. 8, 2003)

³ Remarks by President George W. Bush at Baptist Health Medical Center in Little Rock, Arkansas; Jan. 26, 2004.

⁴ Congressional Budget Office, *Limiting Tort Liability for Medical Malpractice*, Economic and Budget Issue Brief (Jan. 8, 2004)

⁵ Remarks by President George W. Bush at Baptist Health Medical Center in Little Rock, Arkansas; Jan. 26, 2004.

⁶ General Accounting Office, *Medical Malpractice Insurance: Multiple Factors Have Contributed to Increased Premium Rates*, GAO-03-702 (June 2003)

<p>“The risk of frivolous litigation drives doctors...to prescribe drugs and procedures that may not be necessary, just to avoid lawsuits. That's called the defensive practice of medicine.”⁷</p>	<p>A 2004 CBO study found that, “Some so-called defensive medicine may be motivated less by liability concerns than by the income it generates for physicians or by the positive (albeit small) benefits to patients. On the basis of existing studies and its own research, CBO believes that savings from reducing defensive medicine would be very small.”⁸</p>
<p>“The direct cost of liability insurance and the indirect cost from unnecessary medical procedures raise the federal government's health care costs by at least \$28 billion a year....The cost of defensive medicine raises your bill as a taxpayer.”⁹</p>	<p>This claim rests mainly on a single 1996 study by two Stanford economists who focused exclusively on hospitalized heart patients and then projected their findings to the entire health-care system. Both the GAO and the CBO question their sweeping conclusion, with the CBO arguing, “In short, the evidence available to date does not make a strong case that restricting malpractice liability would have a significant effect, either positive or negative, on economic efficiency.”¹⁰</p>
<p>“States that have got a hard cap have seen positive results.”¹¹</p>	<p>According to numerous independent studies, including a June 2003 report by Weiss Ratings, Inc., “Caps on non-economic damages have failed to prevent sharp increases in medical malpractice insurance premiums, even though insurers enjoyed a slowdown in their payouts.”¹² The same study found that, from 1991 to 2002, annual premiums went up by 48.2 percent in states with caps compared to 35.9 percent in states without them.</p>

⁷ Remarks by President George W. Bush at Baptist Health Medical Center in Little Rock, Arkansas; Jan. 26, 2004.

⁸ Congressional Budget Office, *Limiting Tort Liability for Medical Malpractice*, Economic and Budget Issue Brief (Jan. 8, 2004)

⁹ Remarks by President George W. Bush at Baptist Health Medical Center in Little Rock, Arkansas; Jan. 26, 2004.

¹⁰ Congressional Budget Office, *Limiting Tort Liability for Medical Malpractice*, Economic and Budget Issue Brief (Jan. 8, 2004)

¹¹ Remarks by President George W. Bush at Baptist Health Medical Center in Little Rock, Arkansas; Jan. 26, 2004.

¹² Weiss Ratings, Inc., *Medical Malpractice Caps: The Impact of Non-Economic Damage Caps on Physician Premiums, Claims Payout Levels, and Availability of Coverage*, June 2, 2003.