Protect patient and whistle-blower confidentiality. To encourage patients and witnesses to come forward with evidence of malpractice, the identity of those who complain in good faith to the medical board should be kept confidential. Those who make such complaints should be given immunity from anti-free speech lawsuits brought by physicians to intimidate whistle-blowers and discourage such disclosures.

Force insurance companies to cooperate. Insurance companies should be required to forward all claims and settlement information involving malpractice claims against physicians, hospitals and other medical professionals to state licensing boards.

End Conflicts of Interest That Lead to Financial Malpractice. Physicians should not have a financial interest in hospitals, laboratories, diagnostic facilities and other health care institutions. Research studies have demonstrated that such conflicts of interest lead to unnecessary medical care, raising health care costs and, worse, exposing patients to unnecessary medical risks. Until the profit motive is removed from medical practice, physicians will continue to order unnecessary and expensive medical procedures.

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hundred percent of physicians' license fees should go to funding the boards; presently, these funds are often diverted by lawmakers to pay for other state programs. In addition, Congress should create a small program of grants-in-aid to state medical boards. These federal grants should be tied to the boards' agreement to meet high standards of performance and independence.

Boards should be given more disciplinary authority, and the disciplinary process should be made more efficient. Presently, bureaucratic procedures slow the resolution of serious cases. Lawyers for physicians can fend off action for months or years, allowing dangerous physicians to remain "on the street." The boards should be given the authority to suspend a physician on an emergency basis pending formal hearings in cases where a doctor poses a potential danger to other patients. In addition, medical board disciplinary actions should not be stalled or delayed by litigation. In serious cases, they should take effect while a physician pursues lengthy appeals through the court system.

All formal disciplinary actions and all formal complaints, regardless of the outcome, should be considered public matters and the records of such cases should be made available promptly and easily (through a toll-free number, for example) to anyone who requests them.

Improve national coordination. The National Practitioner Data Bank (NPDB), taxpayer-funded and operated by the federal government, tracks doctor disciplinary actions, hospital revocation of physicians' privileges and malpractice claims paid by insurers throughout the country and makes the data available to state medical boards and hospitals. Other state and federal agencies should be required to coordinate with the NPDB. For example, the Drug Enforcement Administration should alert pharmacists and the public about which doctors' prescription licenses it has pulled or restricted. Moreover, criminal sanctions should be imposed for misuse of prescription drugs. Finally, consumers should have full access to the information contained in the NPDB.

approximately $153,000; after such standards were effected, the average claim dropped to roughly $34,000.

Require Periodic Check-Ups for Doctors, Nurses and Hospitals. Periodic refresher courses and continuing education is required of many professionals, including lawyers, accountants and, in some cases, doctors. However, as is true of many other professions, the requirements are weak and accountability is limited. Incompetence that might be merely costly when it involves other professionals becomes a matter of life and death when a medical practitioner makes a mistake. Doctors should be required to obtain periodic re-certification based upon written exams, clinical evaluations and audits of patients' medical care records. The best way to prevent malpractice is to educate physicians before they make a mistake.

Toughen Government Monitoring and Discipline of Physicians. Independent and rigorous oversight of the medical profession, including a crackdown on dangerous doctors, is essential to curb malpractice. Medical boards should be restructured so that local medical societies are not allowed to dominate, and eviscerate, the boards' oversight and disciplinary functions. Boards should be controlled by non-physician majorities accountable only to the public. The medical lobby argues that lay people don't have the expertise necessary to evaluate the practices of physicians and hospitals, but this is a phony argument. Publicly-controlled medical boards can hire physicians and other technical experts as staff or consultants to review complaints and make recommendations to board members. But consumers, not physicians, should make the final decision.

State medical boards are typically underfunded, with too few investigators and administrative personnel to do the job. Lobbyists for the medical industry usually oppose legislative efforts to strengthen the boards with increased funding and staffing that would ensure timely and thorough investigations of complaints. Adequate resources should be provided to the boards. One

practice of rewarding good drivers with a discount on their auto insurance. It would ensure that doctors with histories of negligence or incompetence pay more, and doctors with clean records would be rewarded with lower rates.

B. Reducing Malpractice

Protect the Doctor-Patient Relationship. In 1990, the Texas Medical Association invited doctors who had practiced at least 20 years without a malpractice lawsuit to explain how they handle their relationships with their patients. Over 200 doctors responded, and almost all of them focused on improving communication with patients as the key to avoiding lawsuits. In the current era of profit-driven medicine, protecting the doctor-patient relationship -- and the ability of doctors to properly treat their patients -- is essential.

Improve Loss Prevention" Techniques. Medical science should do more to prevent malpractice through research that is disseminated to physicians and hospitals. So-called "outcomes research" enables health care practitioners to determine what works and what doesn't. There is presently no program in place to make sure all practitioners get this important information."Practice guidelines" could provide physicians with a check-list of standard, proven procedures. However, if physicians need only show they complied with such guidelines in order to escape malpractice liability, the effect will be to lead medical associations to issue minimal guidelines, a "lowest common denominator" approach that harms rather than protects patients.

Hospitals could improve their mechanisms for identifying and monitoring hospital-caused injuries. Aggressive risk management programs such as those instituted by the Harvard University-affiliated hospitals for anesthesia have proven very effective in reducing liability costs and insurance premiums. An integral part of the program was the development and implementation of clinical standards or protocols. Prior to the use of such standards, the average anesthesia-related malpractice claim was

permissible rates that insurance companies may charge. All rate increases should be subject to the prior approval of an insurance commissioner, who should be accountable directly to the voters by election. Similarly, insurers should be prohibited from arbitrarily canceling or refusing to renew policies. There must be more effective insurance disclosure laws, so that citizens, consumers and policymakers can review lawsuit and claims information to determine the extent of malpractice claims, whether the price of premiums is justified, and what further measures need to be taken to limit malpractice. Finally, state insurance departments need more resources to effectively and independently monitor the industry.

Repeal the industry exemption from the antitrust laws. The insurance industry is not subject to federal regulation and it is exempt from the federal antitrust laws, and even from Federal Trade Commission scrutiny without explicit Congressional approval. Congress should repeal these barriers to competition and oversight.

Mandate fair rating practices to reward good doctors. Currently, insurance companies use narrowly defined subcategories to classify physicians who apply for malpractice liability insurance. Because there are so few physicians in some of the specialties, insurers cannot spread the risk effectively: the result is extremely high premiums for certain specialties, such as obstetricians. These rating systems force a majority of good doctors to subsidize the few bad ones. (It should be noted, however, that physicians collectively bear some responsibility for higher premiums to the extent that they do not discipline negligent physicians within their own ranks.)

Instead, insurance companies should be required by law to spread risk more equitably by placing physicians in a reduced number of underwriting categories. However, in order to differentiate poor doctors from the rest of the pool, insurance companies should charge rates based on a physician's own experience with malpractice claims. This practice, known as "experience rating," is much the same as the

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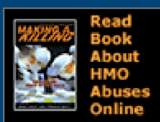

FACTSHEET

How to Address the Insurance and Malpractice Crises Facing the Nation

Recommendations for Insurance Reform and Reducing Malpractice

Solving the medical malpractice crisis requires both insurance reform and improvements to our system for assuring quality healthcare.

A. Insurance Reform

The real cause of the cyclical insurance crisis, and the driving force behind the contrived malpractice lawsuit crisis, is the cash flow underwriting practices of the insurance industry. Unless the destabilizing premium surges and mismanagement caused by the "insurance cycle" are stopped, the result will be periodic "crises" in the insurance market, each an opportunity to scapegoat victims' rights in order to cloak massive premium gouging, arbitrary cancellations and reduced coverage. California's Proposition 103 is a model:

Limit insurance rates, expenses, loss projections and profits. One of the reasons that the insurance industry has been able to squeeze its customers in the malpractice insurance market and elsewhere is the lack of serious regulation and oversight of the industry. Most state regulation of insurers is weak to non-existent, reflecting the fact that officials responsible for oversight are typically beholden to the industry through previous or promised employment. Following the lead of California, there must be greater regulation of the industry's prices and underwriting practices. To prevent wild fluctuations in insurance rates and instability that can lead to insolvency, state insurance departments should set upper and lower limits on