

and hospitals. Its purpose is to prevent doctors who are disciplined in one state from simply traveling to another state and setting up shop. The AMA is now working to shut down the NPDB.

- A series of reports in the 1980s exposed substandard and unregulated medical testing in physician's offices that had led to unnecessary treatment, or, conversely, failure to take appropriate medical action. The result was needless deaths, injuries and higher health care costs. Legislation was introduced in Congress to establish minimum standards for quality at all testing facilities, including those owned by doctors. The AMA bitterly opposed the Clinical Laboratory Improvement Act of 1988, weakening it substantially before it was passed. Then, the AMA went to work to delay and weaken the federal government's enforcement of the law. Five years after the law was passed, federal agencies had still not fully implemented its requirements, and had exempted many medical tests from any regulation under the law. Nevertheless, the AMA is now lobbying Congress to repeal the law as part of the health care reform legislation.
- The Health Care Finance Administration, a federal agency, used to rank hospitals based on their record of fatalities for various surgical procedures and provide this information to the public. Of course, the hospital lobby strongly objected to this practice, which enabled consumers to avoid hospitals with a dangerous safety record for certain types of surgery. Others raised questions about the validity of the statistics. In 1993, the Clinton Administration suspended further release of the hospital mortality rates.<sup>96</sup>

In the face of government's abject failure to protect consumers from medical negligence and incompetence, the judicial system serves an essential role. It helps identify and punish incompetent physicians who might otherwise continue their dangerous practices undisturbed. Indeed, given the lamentable performance of most medical boards, malpractice litigation often is the only way for injured patients to stop an incompetent physician from injuring others.<sup>97</sup>

Even after the devastating Highway Patrol report led to an internal restructuring, the medical lobby fought to limit the changes. It won a ruling from the California Supreme Court preventing victims of medical malpractice from obtaining copies of physicians' applications to hospitals for staff privileges.<sup>91</sup> It sued in court to block the Board from disclosing to consumers whether doctors are convicted felons, have lost malpractice cases or face disciplinary action.<sup>92</sup>

The California Medical Association adamantly opposes disclosure of the outcome of malpractice cases — 89.8 percent of which are settled out-of-court and kept secret.<sup>93</sup> The public doesn't need to know whether a physician has admitted negligence, the state medical lobby says. Moreover, because such information could hurt a physician's reputation, it therefore should remain secret, the group argues. Malpractice ought to be treated like a dog bite, according to the executive vice president of the AMA, who put it this way: "Every dog is entitled to one free bite in a sense. No one is perfect in this world."<sup>94</sup>

As for filing a lawsuit to prevent disclosure of a physician's record, one California doctor commented: "Like anyone else, doctors are entitled to due process and will fight efforts to curtail their legal rights."<sup>95</sup>

Tragically for the people of California, the medical lobby won the passage of legislation restricting the legal rights of medical malpractice victims in 1975 by arguing that the Board would protect patients against dangerous doctors, and that lawsuits were not necessary to discourage malpractice.

Like its state affiliates, the AMA has vigorously resisted improving federal oversight of the medical profession.

- The AMA has long fought the establishment of a federal agency to track doctors who roam from state to state, fleeing state disciplinary authorities and leaving behind a trail of malpractice victims. Public pressure overcame the AMA's opposition in 1986, when Congress created the National Practitioner Data Bank, a federal agency which became operational in 1990. The NPDB 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

- A 1987 study of Cook County, Illinois found 2 percent of all physicians practicing in the county were defendants in 36 percent of all medical negligence litigation filed over a fourteen year period.<sup>86</sup>
- A 1987 Public Citizen study found that 7.5 percent of all practicing physicians in Texas account for 65 percent of all claims filed between 1978 and 1984.<sup>87</sup>

Stronger state medical boards controlled by the public rather than by physicians could quickly improve the quality of medicine and partially restore the public's confidence in the medical community simply by targeting these serious, repeat offenders. Publicly, the AMA and its state affiliates often pay lip service to the need to improve the boards or increase their resources, which are notoriously insufficient.<sup>88</sup>

But behind the scenes, the medical lobby uses its political power and resources to protect its members' behavior against meaningful oversight and public scrutiny by the state medical boards. The Medical Board of California is an excellent example.

In January, 1990, the California Highway Patrol released the results of a six month investigation into the Board. It found that Board staff had destroyed complaints from the public; ordered the dismissal of hundreds of serious cases; hired physicians to review complaints who then failed to recommend action, even in cases of a "clear departure from acceptable standards"; and ignored reports from liability insurance companies and the federal National Practitioner Data Bank of malpractice verdicts or settlements (less than 1 percent of such reports resulted in disciplinary action). A "diversion" program to treat physicians in lieu of disciplinary action was "fraught with problems and corruption," and board employees used agency equipment to conduct personal business during work hours.<sup>89</sup>

The Highway Patrol report came as no surprise to those familiar with the Board. It reflected years of successful efforts by the powerful state physicians' lobby, the California Medical Association, to maintain the Board as an ineffective agency which would protect doctors, not patients. Attempts to pass legislation to reform the Board were routinely blocked by the California Medical Association, which gave state lawmakers \$7.1 million in campaign contributions between 1975 and 1994.<sup>90</sup>

very physicians they insure. These companies know, based on the claims they receive, who among their policyholders are “questionable” doctors. This same information is, or should be, available to state medical boards as well. Yet the typical board’s action rate is far lower than the rate of sanctions (terminations and restrictions) imposed by the physician-owned insurance companies. A recent Tufts University study revealed that insurance companies impose sanctions on doctors at a rate four times higher than those of state medical board regulators.<sup>80</sup>

The failure of state agencies to offer even basic protection to consumers is highlighted by studies which show that a small number of repeat offenders commit a significant percentage of serious malpractice:

- In Florida, 3 percent of the doctors accounted for “nearly half” of the malpractice claims paid by insurers during the years 1975 through 1984.<sup>81</sup> Another Florida study found that, between 1975 and 1980, 3 percent of medical specialty physicians accounted for more than 85 percent of the payments to malpractice victims on behalf of that group of doctors; 6 percent of obstetrics-anesthesiology physicians accounted for more than 85 percent of that group’s payments; and 7.8 percent of the surgical physicians accounted for 75 percent of that group’s payments.<sup>82</sup>
- In a study of 8,000 Los Angeles physicians, 0.6 percent of doctors in a four-year period accounted for 10 percent of all malpractice claims and 30 percent of all payments to victims.<sup>83</sup>
- A 1991 study of physicians covered by the primary physician-owned malpractice insurer in Tennessee found that “disproportionately few physicians” were responsible for “a disproportionately high number of lawsuits.”<sup>84</sup>
- Reviewing records of malpractice claims against a Pennsylvania excess liability insurance fund, 1 percent of physicians accounted for 25 percent of losses paid over a 10-year period.<sup>85</sup>

and had removed her appendix to boot. But worst of all, Dr. Pollock had been accused of causing the death of another patient in 1982 through gross malpractice. And that patient's family had sued for malpractice and won — yet that information was kept secret from the public, and from Amy Moore.

Where was the state medical watchdog agency that is supposed to protect the public against doctors like Pollock? Seven years later, it is presently “negotiating” with Dr. Pollock to “retire” without a blemish on his record. He is still practicing medicine in California.<sup>79</sup>

Why, if the incidence of medical malpractice is so serious, are state medical boards so lax in chasing down bungling doctors?

The answer is that most state boards are controlled by the physicians they are supposed to oversee — a classic case of the fox guarding the chicken coop. Virtually all state medical authorities see their mission as protecting members of the medical profession, rather than their patients. When it comes to confronting dangerous doctors, their chief aim is to “rehabilitate” what they call “impaired” doctors so they can continue to practice medicine.

The boards simply have not made it a priority to purge incompetents or to expose them to public view. The inability of the press and the public to obtain information about incompetent doctors has only aggravated this problem. As a result, many doctors who have been successfully sued several times for malpractice continue to treat unwitting patients; chemically-dependent doctors continue to practice without censure or expulsion; and, if barred in one state, physicians can move to another state and resume their dubious activities, without attracting the wrath of medical boards.

Here is one of the most revealing indications that doctor discipline is far too lax: Malpractice insurance companies — usually content to pass through the costs of malpractice claims to policyholders — are often more aggressive in taking action against bad doctors than are the state medical boards. Why are some insurance companies more concerned about dangerous doctors than the state regulators? Because many companies that write medical malpractice insurance are *owned* by the

or that he had terminated the pregnancy. In a subsequent visit, the physician performed an abortion procedure, again without informing the woman. After the victim discovered the malpractice, she found out that the same doctor had lost his license in New York for accidentally killing two infants and injuring other patients, but had simply moved 160 miles and set up shop in Connecticut.<sup>76</sup>

- A New Hampshire doctor who had been sued for malpractice eight times — three of which involved fatalities — convinced disciplinary authorities in that state to let him evade prosecution by accepting a mild reprimand and moving to Texas, where he intended to set up a new practice.<sup>77</sup>

The state medical authorities themselves estimated in 1986 that there were 28,000 unlicensed individuals practicing medicine, some total impostors.<sup>78</sup>

The failure of state authorities to adequately monitor the medical profession is indisputable. Consider this typical case:

- Amy Moore, a 37-year-old mother of four, was told she needed surgery in a California hospital for removal of a cyst behind her uterus. However, she had no insurance. Her physician, Dr. Lawrence Pollock, offered to do the surgery and cover the hospital expenses in exchange for \$5,000. He operated on Moore in July, 1987. Despite a recurrent fever after the surgery, the doctor, trying to keep the expenses down, sent her home from the hospital, where she grew worse. Over the following days, Dr. Pollock gave her large quantities of medication and even re-stitched an infected incision, but never ordered her back to the hospital, even as she began crying out in pain. Finally, the woman went into cardiac arrest. Dr. Pollock was called, but was unable to revive her.

Her family later learned that the cyst was normal. Moreover, Dr. Pollock had not only removed the cyst, but, without permission, conducted a total abdominal hysterectomy,

Moreover, previous studies have shown that a great many of the disciplinary actions were not in response to negligence or substandard care, but were the result of substance abuse, economic fraud or criminal activity. Indeed, a 1993 report by Public Citizen found that only 693 (or 11.4 percent) of the disciplined physicians were punished for negligence or substandard care, while three times as many — 2,247 (or 37 percent) — were disciplined for misprescribing or over-prescribing drugs, drug or alcohol abuse, criminal convictions, or sexual abuse or misconduct.<sup>71</sup>

The reality is that the state-by-state system intended to monitor the performance of doctors and protect the public against malpractice is a complete failure.

Even the most egregious instances of medical malpractice are sometimes ignored by state physician disciplinary authorities. A review of California disciplinary actions revealed that of 212 physicians with criminal convictions for rape, murder, fraud, child molesting, or selling prescription drugs, only 23 percent had had their license to practice medicine taken away.<sup>72</sup> This kind of regulatory neglect is the standard, not the exception, throughout the nation.<sup>73</sup>

Worse, the time lag between a report of a possible case of malpractice or even criminal behavior and action by state officials averages 37 weeks, according to regulators.<sup>74</sup> However, individual cases can stretch for years, particularly when criminal charges are involved.

In the meantime, those few doctors who face prosecution find it easy to avoid the authorities simply by moving to another state. A report by the federal government showed that of 181 medical professionals who had been targeted by disciplinary authorities in Michigan, Ohio and Pennsylvania between 1977 and 1982, 33 were practicing in another state. An executive of the Federation of State Medical Boards estimated that the organization found “25 or 30 sanctioned physicians each month who are state-hopping.”<sup>75</sup> Many patients have learned the hard way that doctors can easily escape accountability:

- After trying for six years to get pregnant, a police clerk in Putnam, Connecticut visited a new gynecologist who, she later learned, had failed to detect her pregnancy and in the process of examining her had damaged or killed the fetus, without informing the patient either that she was pregnant

## Chapter III

### The Government's Failure To Protect the Public

When those charged with the responsibility for protecting our health fail us, to whom are we supposed to turn? Every state in the nation maintains an agency whose purpose is to watchdog the medical industry and protect consumers against dangerous doctors and hospitals.

However, despite the huge number of negligence-caused injuries and deaths, the state medical boards that are responsible for overseeing the medical profession took only 2,190 serious disciplinary actions against the nation's 623,378 physicians in 1993.<sup>69</sup>

According to the most recent report, based on data compiled by the Federation of State Licensing Boards, an average of only 3.51 doctors per every thousand were subjected to license revocation or surrender, suspension, probation, loss of or restrictions upon the license to practice medicine.

While this is a 10.9 percent improvement over the number of actions taken against doctors the year before, it is a deadly statistic for American consumers. Only 0.3 percent — three tenths of one percent — of American physicians are disciplined despite the epidemic of medical negligence, incompetence and malfeasance.

As the report by the Public Citizen Health Research Group conservatively notes:

Given that national projections of Harvard's study of deaths in New York hospitals showed 80,000 deaths a year caused by negligence, mainly by physicians, the number of serious disciplinary actions in 1993 — 2190 — is a dangerously small drop in the bucket of adequate, consumer-protective doctor discipline.<sup>70</sup>