

The Institute for Legal Reform
Malpractice Liability in
West Virginia

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INTRODUCTION

Malpractice Liability in West Virginia was conducted for the U.S. Chamber Institute for Legal Reform among a sample of physicians in West Virginia. This survey sought to provide some insight into the impact of malpractice liability on the practice of medicine and the delivery of medical care. Broadly the survey focused on the availability of physicians in the state and the consequences of concern about malpractice liability for both physicians and patients.

METHODOLOGICAL OVERVIEW

Interviews for *Malpractice Liability in West Virginia* were conducted via U.S. postal service mail. Two hundred eighty nine (289) West Virginia physicians were interviewed. Interviews averaging 10 minutes in length took place between October 2 and November 6, 2002.

A detailed survey methodology including a description of the sampling and survey administration procedures is contained in Appendix A. The complete data-sheeted questionnaire is found in Appendix B.

NOTES ON READING TABLES

The base on each question is the total number of respondents answering that question. An asterisk (*) on a table signifies a value of less than one-half percent (0.5%). A dash represents a value of zero. Percentages may not always add up to 100% because of computer rounding or the acceptance of multiple answers from respondents answering that question. Note that in some cases results may be based on small sample sizes. Caution should be used in drawing any conclusion from results based on these small samples.

PROJECT RESPONSIBILITY AND ACKNOWLEDGEMENTS

The Harris team responsible for the design and analysis of *Malpractice Liability in West Virginia* included Humphrey Taylor, Chairman *The Harris Poll*, David Krane, Senior Vice President, Peter Risher, Senior Project Director and Vincent Fitts, Senior Research Associate. We would like to acknowledge Judyth Pendell, Pendell Consulting, LLC for her invaluable contribution to the design, content, focus and analysis of the project. Harris Interactive is responsible for the final determination of topics, question wording, collection of the data, statistical analysis and interpretation in the report.

PUBLIC RELEASE OF SURVEY FINDINGS

All Harris surveys are designed to comply with the code and standards of the Council of American Survey Research Organizations (CASRO) and the code of the National Council of Public Polls (NCPP). Should data from the survey be released to the public, any release must stipulate that the complete report is also available.

EXECUTIVE SUMMARY

Stories of excessive malpractice litigation are pervasive. Patients' inability to obtain reasonable access to care, hospitals' difficulties recruiting physicians and doctors' decisions to retire early or move their practice to other states have all been attributed to the changing malpractice environment.

While malpractice litigation is a nationwide problem, there is mounting evidence to suggest that the situation is particularly pressing in West Virginia. A recent analysis by the American Medical Association (AMA) identified West Virginia among a dozen states experiencing a medical liability "crisis". In addition, a recent United States Chamber of Commerce study conducted among a national sample of in-house general counsel and other senior litigators at public corporations found that West Virginia's state liability system ranked 49th among all states; only Mississippi ranked lower.

Though anecdotes are abundant, little is known about how physicians as a whole view the malpractice landscape in West Virginia. This study examines physicians' perspectives on the malpractice environment in West Virginia with respect to the availability of doctors in the state, the ability of patients to obtain quality healthcare and the ability of hospitals to continue providing quality patient care.

SUPPLY OF PHYSICIANS IN WEST VIRGINIA

Interviews conducted between October 2 and November 6, 2002 with 289 West Virginia physicians found that an overwhelming majority (90%) believe that, in general, there is a shortage of doctors in the state. An even larger proportion (95%) believes that there is a shortage of doctors in high-risk specialties in the state. *[See Tables 2 and 4]*

Physicians in West Virginia believe the shortage of doctors has caused problems for hospitals and patients.

- At least three out of four physicians in WV say that they are aware of hospitals in their state having trouble recruiting OB/GYNs (83%) and surgeons (79%), and at least half say that they are aware of hospitals having trouble recruiting anesthesiologists (67%) and emergency room physicians (59%). *[See Table 7]*
- Eight out of ten (80%) physicians in WV say that they are aware of patients in their state having trouble obtaining OB/GYN services. An equal proportion (83%) say they are aware of patients in their state having trouble obtaining reasonable access to trauma services. *[See Table 6]*

Among the competing explanations offered, physicians overwhelmingly chose malpractice liability as a contributing factor.

- Among physicians in WV who believe that there is a shortage of doctors in the state generally, virtually all (99%) believe that malpractice liability in the state is among the factors responsible for the shortage. Fewer than half (41%) cite “fees that are too low”, only about a quarter (27%) consider “quality of life/cost of living” to be a factor and only about one in twelve (8%) view “quality of hospitals” as responsible for the shortage of doctors in their state. *[See Table 3]*
- Among physicians in WV who believe that there is a shortage of doctors in the state in high-risk specialties, virtually all (98%) believe that malpractice liability in the state is among the factors responsible for the shortage. Fewer than half (42%) cite “fees that are too low”, only about a quarter (24%) consider “quality of life/cost of living” as a factor, and only about one in twelve (9%) view “quality of hospitals” as a factor responsible for the shortage of doctors in their state. *[See Table 5]*

FEELINGS ABOUT MALPRACTICE LIABILITY

Malpractice liability is prominent in the minds of WV physicians. Virtually all (97%) say that their concerns about the risks of malpractice liability have increased since the beginning of their career. A similar proportion (98%) think that malpractice claims occur mainly from adverse results rather than from actual medical error. *[See Tables 9 and 11]*

Nine out of ten (93%) WV physicians do not feel that they can trust the current justice system to achieve reasonable outcomes. Two out of three (67%) disagree “strongly”. *[See Table 10]*

EFFECTS OF MALPRACTICE LIABILITY ON PHYSICIAN PRACTICE

❖ WHERE TO PRACTICE AND WHETHER TO CONTINUE PRACTICING

Many WV physicians report that they personally have considered practicing medicine in another state or leaving the practice of medicine due to concern over unreasonable malpractice liability. To an even greater degree, physicians believe that other physicians consider and act based on similar concerns.

- Two out of three (65%) physicians in WV say that concern over unreasonable malpractice liability has caused them to consider practicing medicine in another state. Four out of ten (41%) say that it has caused them to consider retiring early, and three in ten (30%) say that it has caused them to consider leaving the practice of medicine. *[See Table 13]*
- Most physicians in WV also believe that concern over unreasonable malpractice liability at least sometimes causes other doctors in their state to consider practicing medicine in another state (96%) and

to consider retiring early (96%). Roughly three in four (78%) physicians in WV believe that concern over unreasonable malpractice liability frequently or sometimes causes other doctors in their state to consider leaving the practice of medicine, and four in ten (42%) believe that it at least sometimes causes doctors to consider changing their medical specialty. *[See Table 14]*

- More than half (56%) of physicians in WV believe that concern over unreasonable malpractice liability frequently causes other doctors in their state to actually begin practicing medicine in another state and more than a third (35%) believe that concern over unreasonable malpractice liability frequently causes other doctors in their state to actually retire early. About one in six (18%) physicians in WV believe that concern over unreasonable malpractice liability frequently causes other doctors in their state to actually leave the practice of medicine, and one in twelve (8%) believe that it frequently causes doctors to actually change their medical specialty. *[See Table 14]*

According to physicians in WV, some specialties are more likely to be affected by concerns about malpractice liability than others. Physicians (47%) in WV who are aware of a doctor in their state who has changed specialties most commonly know of a doctor who changed from being an OB/GYN to a different type of doctor. About one in three (33%) know a doctor who moved from surgery to a different specialty, about one in four (25%) know a doctor who moved from emergency medicine to a different specialty, and one in five (19%) know a doctor who moved from anesthesiology to a different specialty. *[See Table 15]*

❖ PATIENT TREATMENT

Concerns about malpractice liability have a real impact on the way doctors treat their patients. WV physicians order more tests, write more prescriptions, refer more patients and recommend more procedures due to concerns about malpractice liability.

- Overwhelming majorities of physicians in WV say that they have noticed the fear of malpractice liability cause physicians to order more tests than they would based only on professional judgment of what is medically needed (95%) and to refer patients to specialists more often than they would based only on professional judgment (93%). The vast majority of physicians in WV also say that they have noticed the fear of malpractice liability cause physicians to prescribe more medications such as antibiotics than they would based only on professional judgment of what is medically needed (79%) and suggest invasive procedures such as biopsies to confirm diagnoses more often than they would based solely on their professional judgment (77%). *[See Table 16]*
- Large majorities of physicians in WV say that the fear of malpractice liability has caused them personally to order more tests than they would based only on professional judgment of what is medically needed (84%) and to refer patients to specialists more often than they would based only on professional

judgment (81%). More than half also say that the fear of malpractice liability has caused them to prescribe more medications such as antibiotics than they would based only on professional judgment of what is medically needed (53%) and suggest invasive procedures such as biopsies to confirm diagnoses more often than they would based solely on their professional judgment (59%). *[See Table 17]*

Additionally, physicians are less likely to perform certain procedures due to concerns about malpractice liability. Two out of three (66%) physicians in WV say that they have personally avoided conducting certain procedures or interventions because of the risk of adverse outcomes and resulting medical liability. The overwhelming majority (91%) of physicians in WV feel that other doctors in their state at least sometimes avoid conducting certain procedures or interventions because of the risk of adverse outcomes and resulting medical liability. Approximately four out of ten (40%) feel that other doctors in their state frequently avoid conducting certain procedures or interventions because of the risk of adverse outcomes and resulting medical liability. *[See Tables 18 and 19]*

SUMMARY

WV physicians believe their ability to provide quality medical care has gotten worse. Setting aside improvements in technology or medical knowledge, half (50%) of physicians in West Virginia believe that the ability of physicians and nurses to provide quality medical care to patients has gotten worse compared to five years ago. *[See Table 1]*

Nearly all WV physicians think malpractice liability limits their ability to provide quality medical care. Nine out of ten (94%) physicians in WV think that the malpractice system limits the ability of doctors in their state to provide the highest quality medical care possible at least “somewhat”; including more than half (56%) who think it limits their ability “a great deal”. *[See Table 12]* WV physicians order more tests, write more prescriptions, refer more patients, recommend more procedures and avoid some procedures due to concerns about malpractice liability. Additionally, WV physicians feel the malpractice liability has created a shortage of doctors.

WV physicians feel that changing the malpractice liability system will help. Three out of four (73%) physicians in WV say that they believe shortages could be alleviated “a great deal” by changes in the malpractice liability system. Almost all (97%) believe that shortages could be alleviated at least “somewhat” by changes in the malpractice liability system. *[See Table 8]*

COMPARISON WITH PHYSICIANS NATIONWIDE

Physicians in West Virginia (23%) are somewhat less likely than physicians throughout the nation (31%) to think the ability of physicians and nurses to provide quality care has improved in the last five years. However, they are not more likely to think the ability to provide quality care has gotten worse (50% in WV and 51% nationwide); rather it has stayed about the same (26% in WV and 17% nationwide). *[See Table 20]*

Concern about the risk of malpractice liability for physicians in West Virginia (97%) is more likely to have increased since the beginning of their careers than for physicians nationwide (87%). *[See Table 21]*

Physicians in West Virginia (93%) are much more likely to disagree physicians can trust the current justice system to achieve a reasonable outcome than physicians nationwide (83%). Approximately two out of three (67%) physicians in West Virginia strongly disagree that the current justice system can be trusted compared to only four in ten (42%) nationwide. *[See Table 22]*

Physicians in West Virginia and nationwide overwhelmingly believe that malpractice claims occur because of adverse results (98% in WV and 96% nationwide) rather than medical error (1% in WV and 4% nationwide). *[See Table 23]*

In nearly all cases, physicians in West Virginia responded that they personally and other physicians in their state are more likely to order more tests (84% personally and 95% among other physicians in WV vs. 79% personally and 91% among other physicians nationwide), refer patients to specialists more often (81% personally and 93% among other physicians in WV vs. 74% personally and 85% among other physicians nationwide) and prescribe more medications (53% personally and 79% among other physicians in WV vs. 41% personally and 73% nationwide) due to fear of malpractice liability than physicians nationwide. Physicians in West Virginia (59% personally and 77% among others in WV) were no more likely to suggest invasive procedures than physicians nationwide (51% personally and 73% among other physicians nationwide). *[See Tables 24 and 25]*

DETAILED ANALYSIS OF RESULTS

Table 1

Quality of Medical Care Over Past Five Years

Setting aside improvements in technology or medical knowledge, half (50%) of physicians in West Virginia (WV) believe that the ability of physicians and nurses to provide quality medical care to patients has gotten worse compared to five years ago. About one in four (23%) WV physicians think the ability to provide quality care has improved while about the same proportion (26%) believe it has stayed about the same.

QA1 Setting aside improvements in technology or medical knowledge, do you think the ability of physicians and nurses to provide quality medical care to patients has improved, has gotten worse or is it about the same as it was five years ago?

Base: All respondents

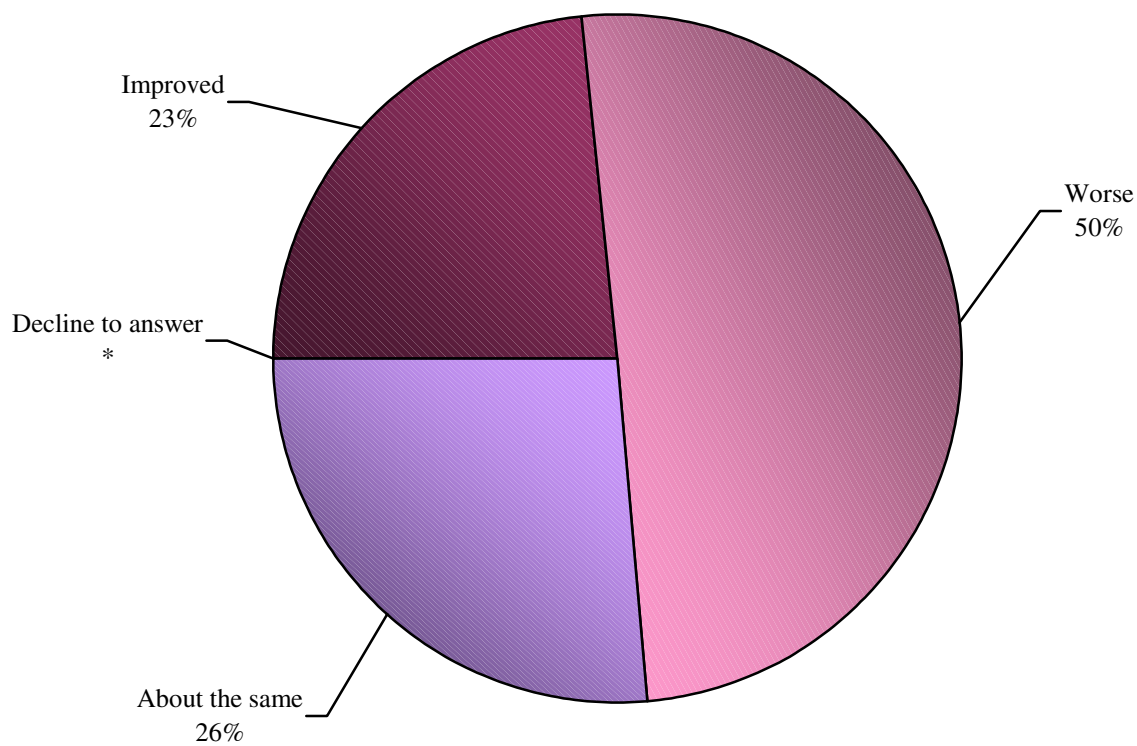


Table 2

Availability of Doctors

Nine out of ten (90%) physicians in West Virginia believe that, in general, there is a shortage of doctors in their state. Roughly one in nine (10%) believe that there are about the right amount of doctors in their state and virtually none (less than .5%) believe that there is a surplus of doctors.

QA2. Do you believe that there is a surplus, shortage or about the right amount of doctors in your state generally?

Base: All respondents

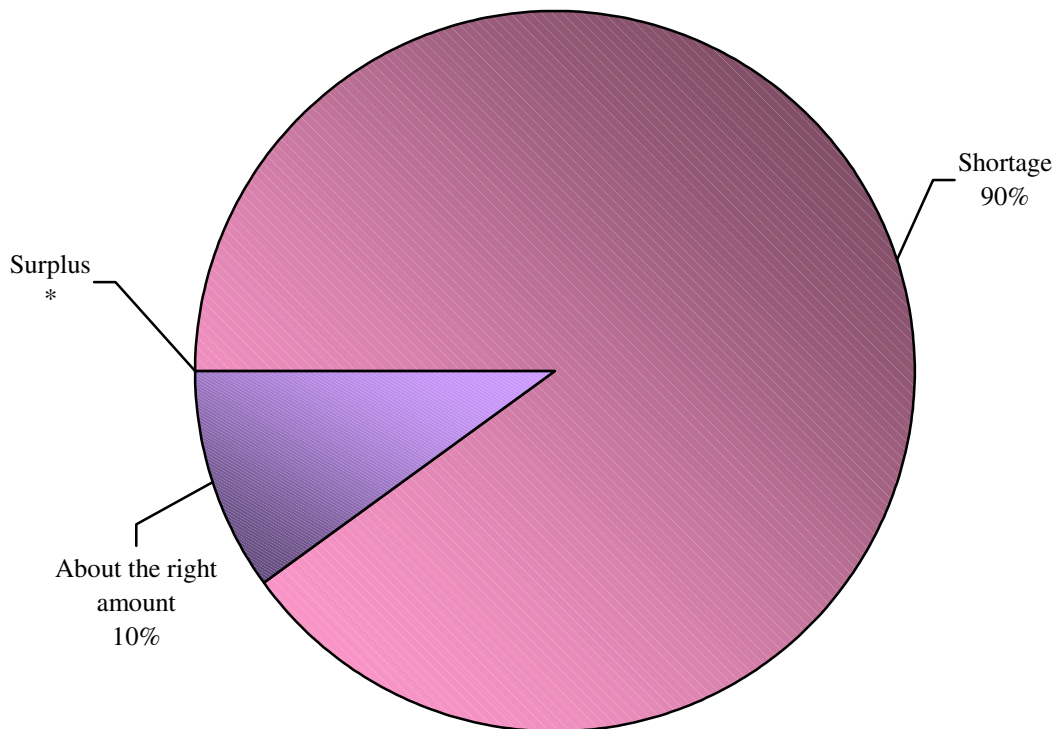


Table 3

Reasons for shortage

Among physicians in WV who believe that there is a shortage of doctors in their state, virtually all (99%) believe that malpractice liability in the state is among the factors responsible for the shortage. Fewer than half (41%) cite “fees that are too low”, only about a quarter (27%), “quality of life/cost of living”, and only about one in twelve, (8%) “quality of hospitals” as factors responsible for the shortage of doctors in their state.

QA3 Which of the following do you believe are responsible for the shortage of doctors in your state?

Base: Believe there is a shortage of doctors in the state generally

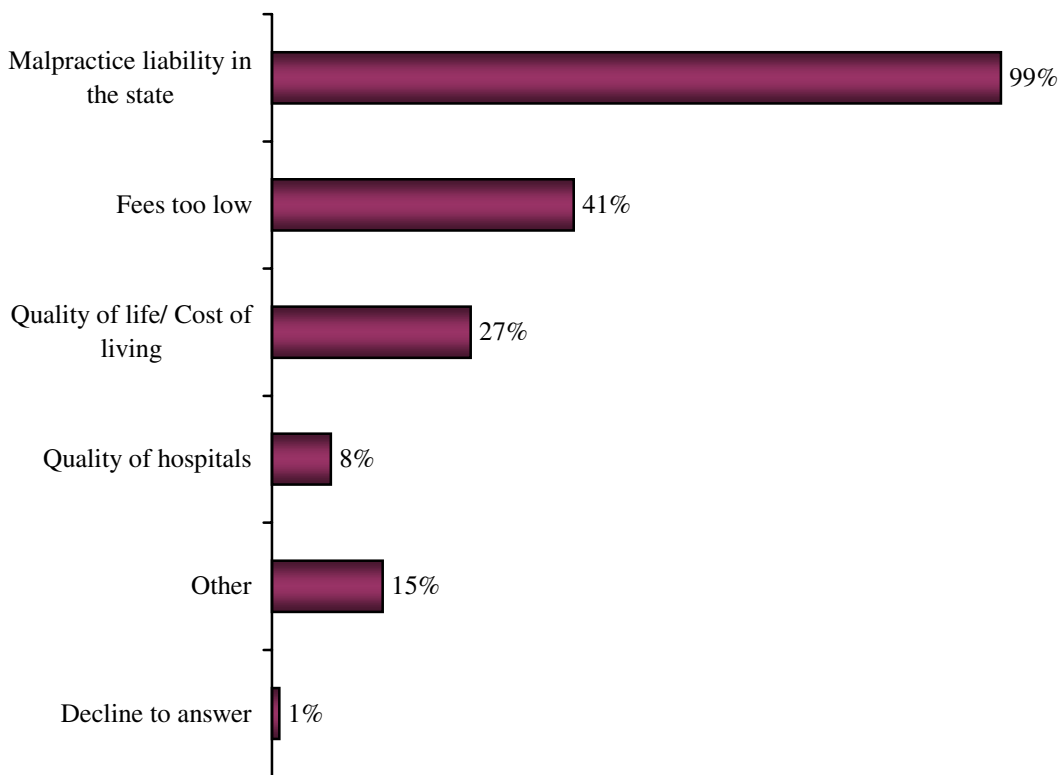


Table 4

Availability of Doctors in High-risk specialties

Nine out of ten (90%) physicians in WV believe that there is an overall shortage of doctors in their state, an even larger proportion (95%) believe that there is a shortage of doctors in high-risk specialties in their state.

QA4 Do you believe that there is a surplus, shortage or about the right amount of doctors in high-risk specialties in your state?

Base: All physicians

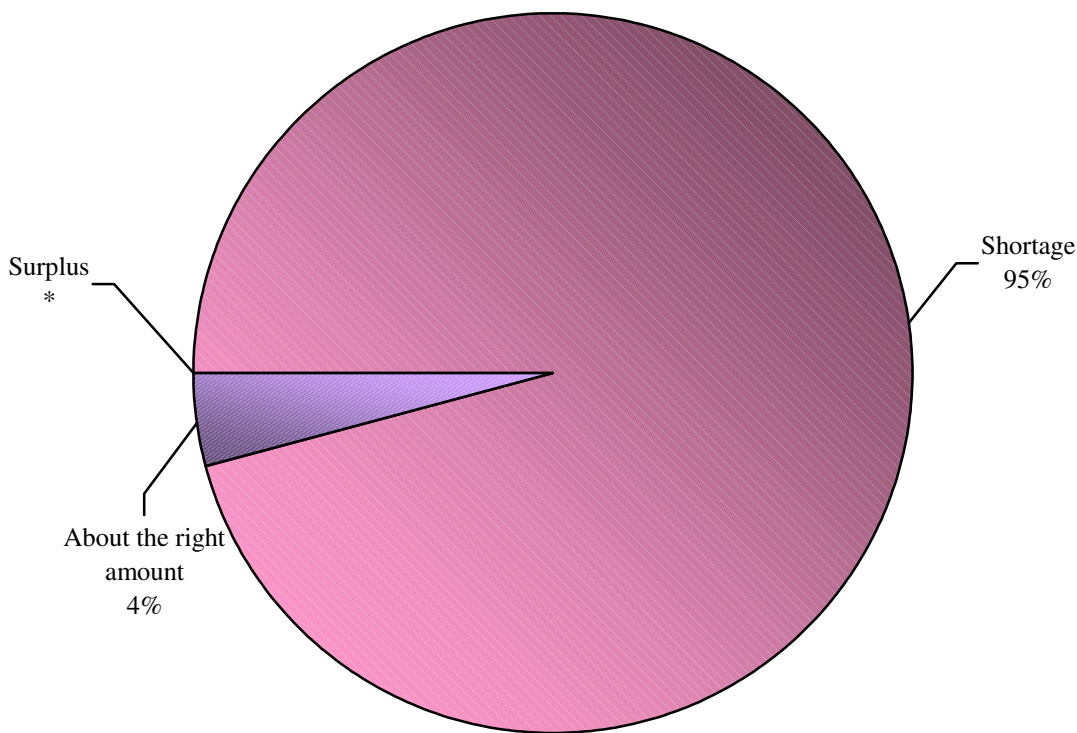


Table 5

Reasons for shortage in High-risk specialties

As with the overall shortage of doctors, virtually all (98%) physicians in WV believe that malpractice liability in the state is one of the factors responsible for the shortage of doctors in high-risk specialties. Fewer than half (42%) cite “fees that are too low”, only about a quarter (24%), “quality of life/cost of living” and only one in ten (10%) “quality of hospitals” as factors responsible for the shortage of doctors in their state.

QA5 Which of the following do you believe are responsible for the shortage of doctors in high-risk specialties in your state?

Base: Believe there is a shortage of doctors high-risk specialties in the state

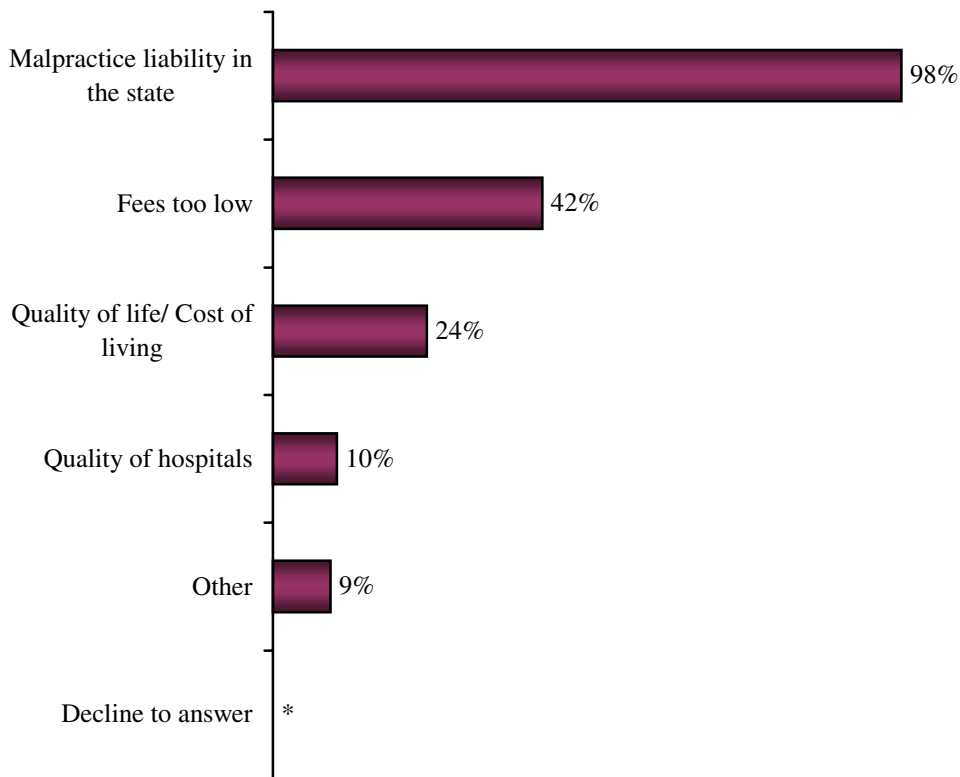


Table 6

Effects of shortage on patient care

Eight out of ten (80%) physicians in WV say that they are aware of patients in their state having trouble obtaining OB/GYN services, and an equal proportion (83%) say they are aware of patients in their state having trouble getting reasonable access to trauma services.

QA6 Are you aware of patients in your state having trouble...?

Base: All respondents

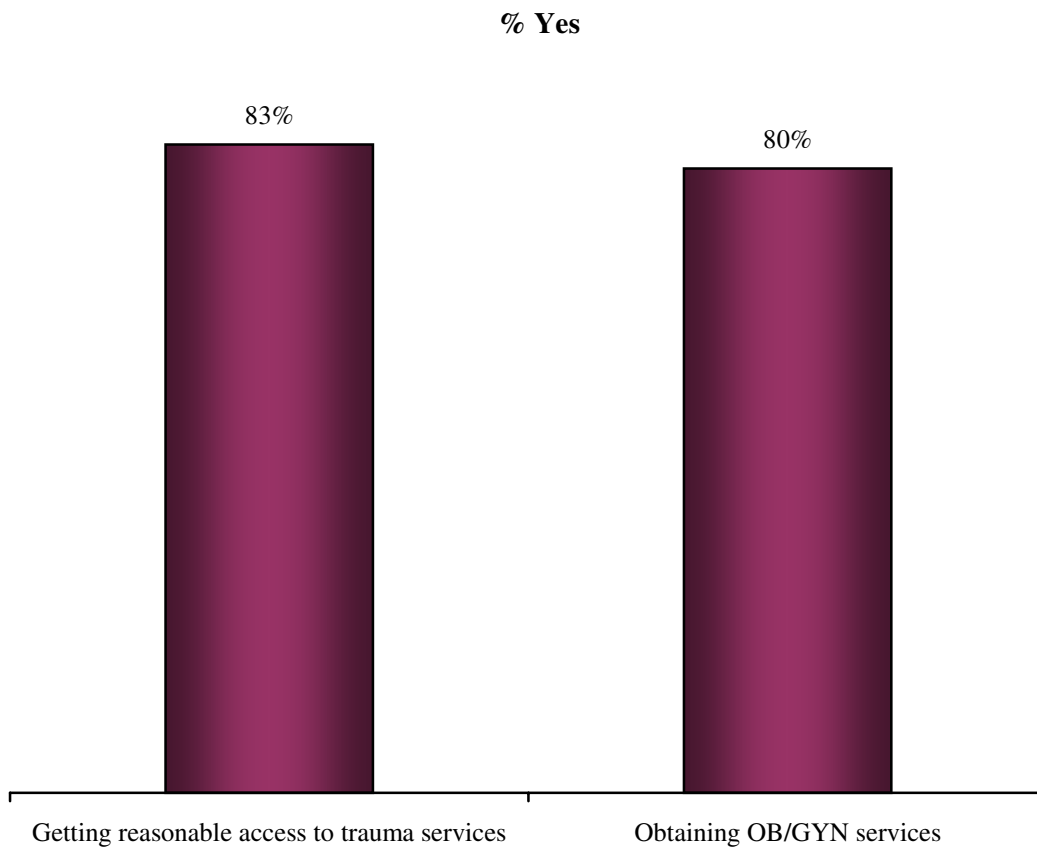


Table 7

Effects of shortage on Hospital recruitment

At least three out of four physicians in WV say that they are aware of hospitals in their state having trouble recruiting OB/GYNs (83%) and surgeons (79%), and at least half say that they are aware of hospitals having trouble recruiting anesthesiologists (67%) and emergency room physicians (59%).

QA7 Are you aware of hospitals in your state having trouble recruiting...?

Base: All respondents

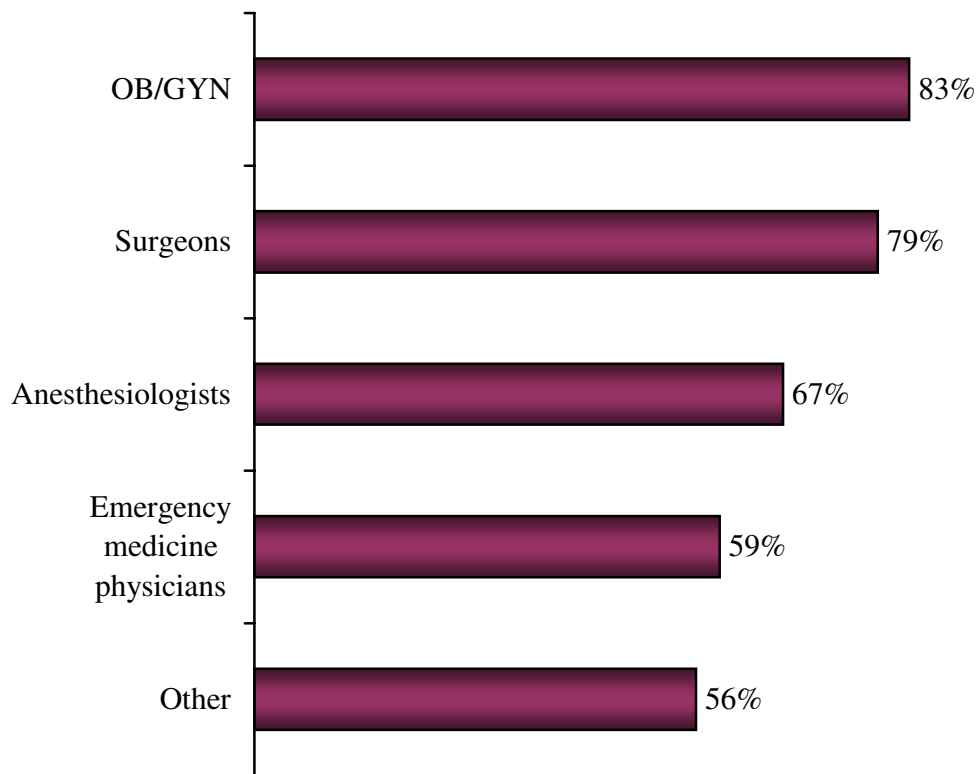


Table 8

Impact of Malpractice Reform on Shortages

Three out of four (73%) physicians in WV say that they believe shortages could be alleviated “a great deal” by changes in the malpractice liability system. Almost all (97%) believe that shortages could be alleviated at least “somewhat” by changes in the malpractice liability system.

QA8 How much do you believe shortages could be alleviated by changes in the malpractice liability system?

Base: All respondents

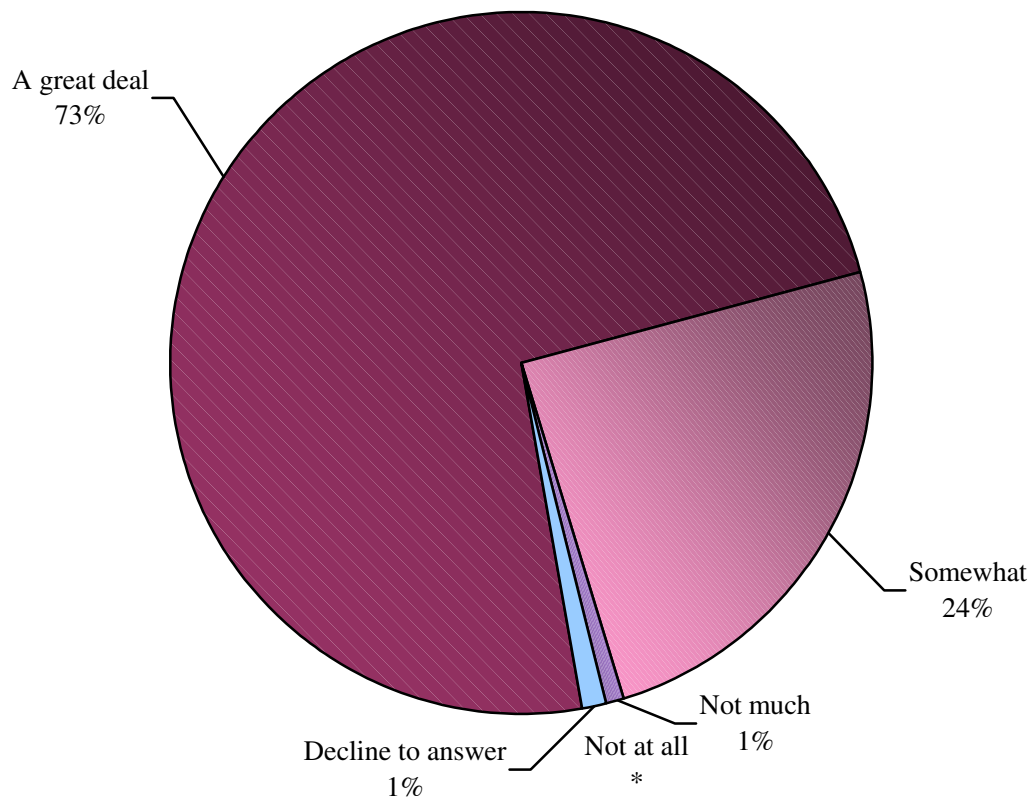


Table 9

Awareness of Malpractice Liability

Virtually all (97%) physicians in WV say that their concern or awareness about the risks of malpractice liability has increased since the beginning of their career.

QB1 Since the beginning of your career, would you say your concern or awareness about the risks of malpractice liability has . . . ?

Base: All respondents

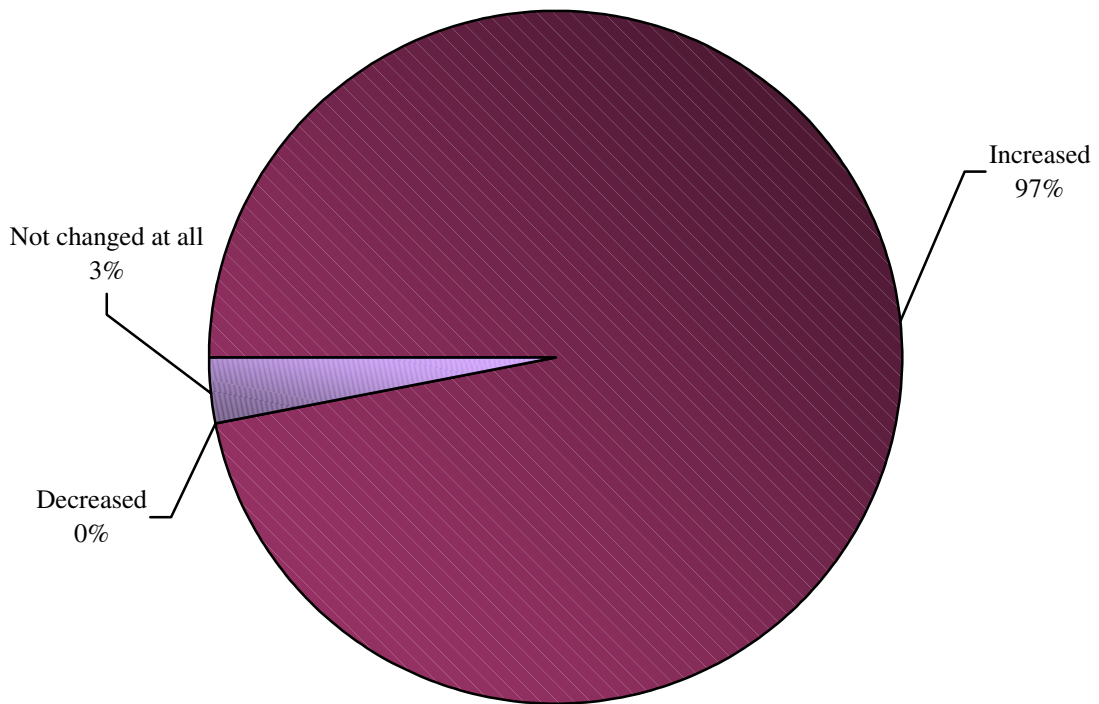


Table 10

Ability to trust the current justice system

Nine out of ten (93%) physicians in WV disagree that if sued, physicians can trust the current justice system to achieve a reasonable result. Two out of three (67%) disagree “strongly”.

QB2 If sued, do you agree or disagree that physicians can trust the current justice system to achieve a reasonable result?

Base: All respondents

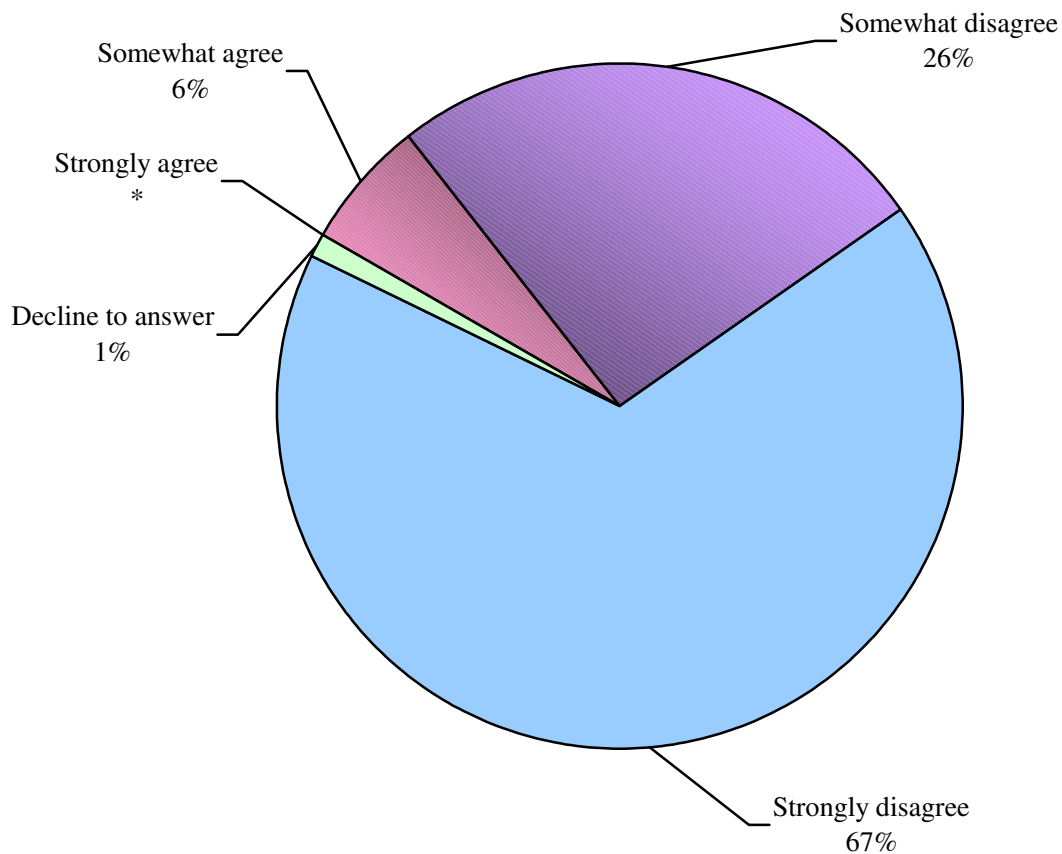


Table 11

Cause of Malpractice Liability

Virtually all (98%) physicians in WV think that malpractice claims occur mainly from adverse results rather than from actual medical error.

QB3 Do you think malpractice claims occur mainly from actual error or mainly from adverse results?

Base: All respondents

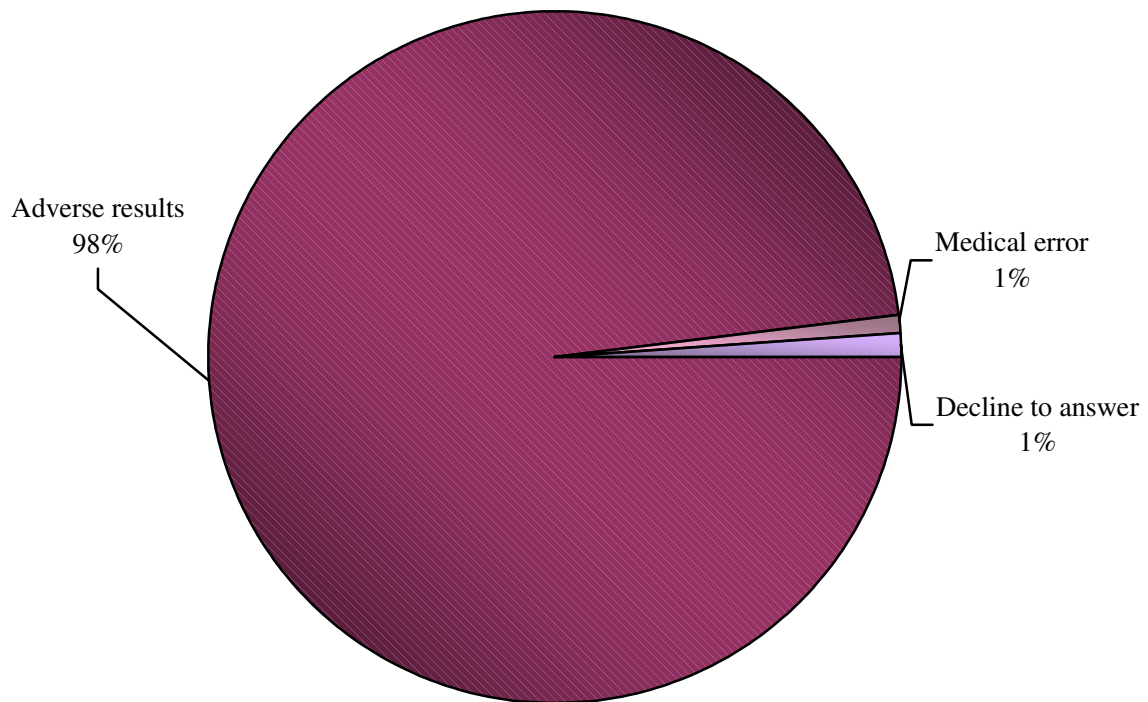


Table 12

Impact on Quality Care

More than nine out of ten (94%) physicians in WV think that the malpractice system limits the ability of doctors in their state to provide the highest quality medical care possible at least “somewhat”. More than half (56%) think that it limits their ability “a great deal”.

QB4 How much do you think the malpractice system limits the ability of doctors in your state to provide the highest quality medical care possible?

Base: All respondents

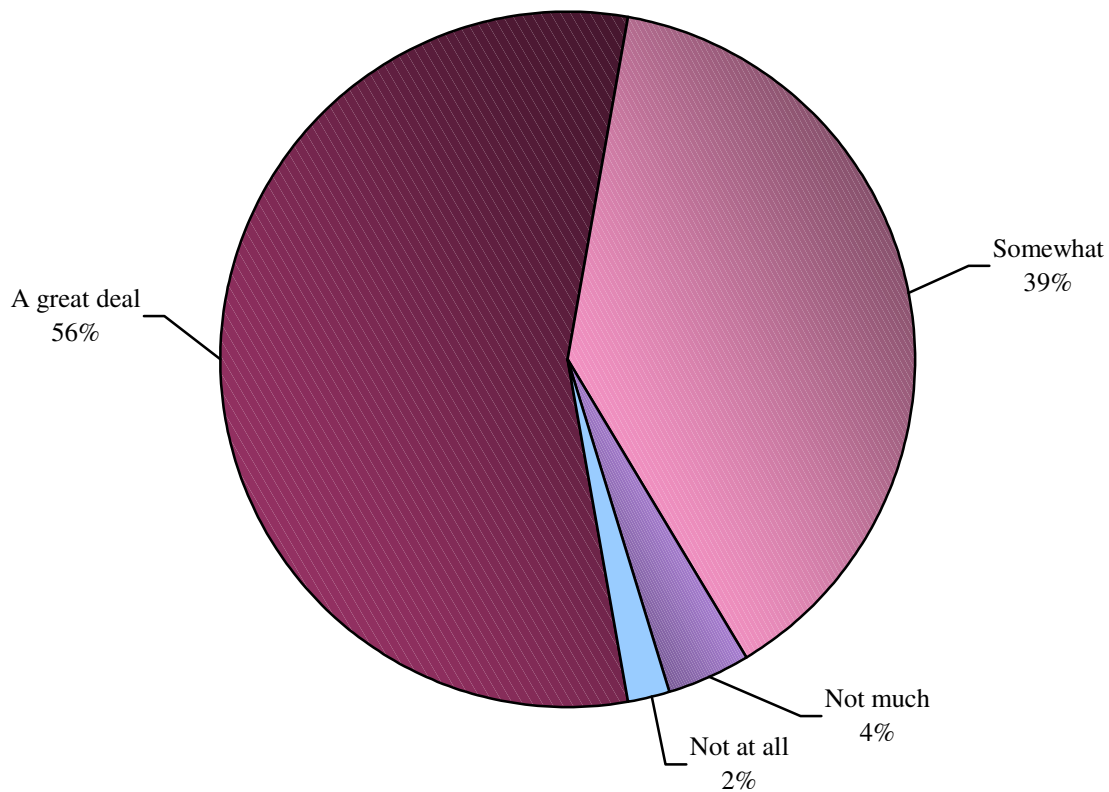


Table 13

Personal Consequences of Malpractice Concern

Two out of three (65%) physicians in WV say that concern over unreasonable malpractice liability has caused them to consider practicing medicine in another state. Four out of ten (41%) say that it has caused them to consider retiring early, and three in ten (30%) say that it has caused them to consider leaving the practice of medicine.

QC1 Has concern over unreasonable malpractice liability caused you to...?

Base: All respondents

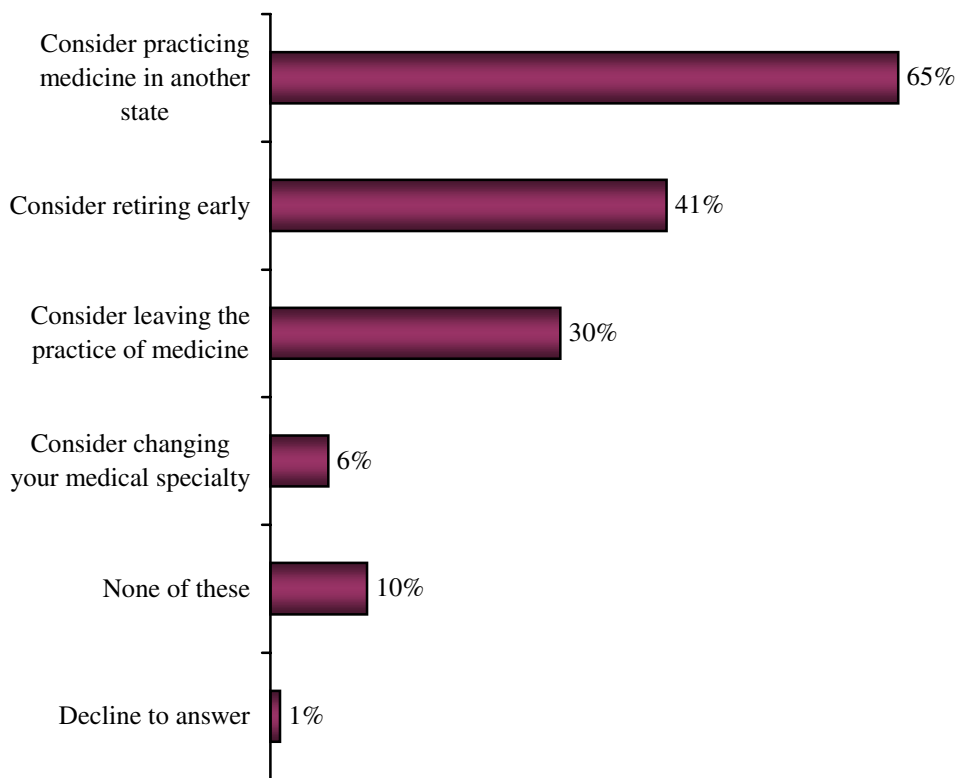


Table 14

Perceived Consequences of Malpractice Concern

Most physicians in WV believe that concern over unreasonable malpractice liability at least sometimes causes other doctors in their state to consider practicing medicine in another state (96%) and to consider retiring early (96%). Similar proportions of physicians believe that unreasonable malpractice liability is at least sometimes a factor in other doctors' decisions to actually begin practicing medicine in another state (94%) or to retire early (89%).

QC2 As far as you know, does concern over unreasonable malpractice liability frequently, sometimes, rarely or never cause other doctors in your state to...? [Consider]

QC3 As far as you know, does concern over unreasonable malpractice liability frequently, sometimes, rarely or never cause other doctors in your state to...? [Actually]

Base: All respondents

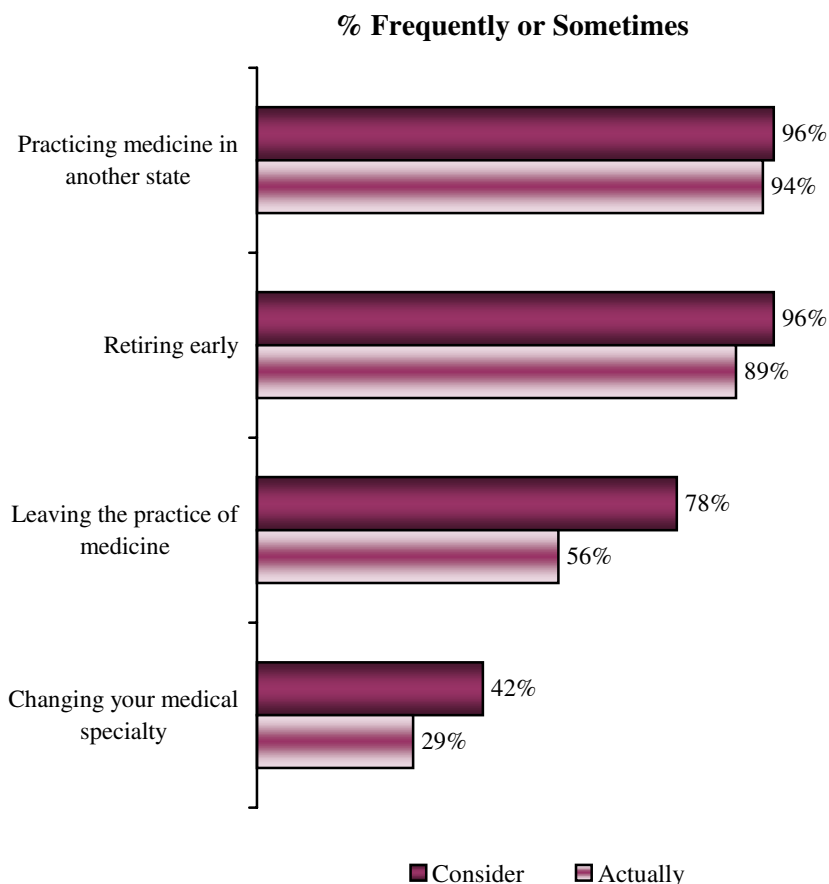


Table 15

Specialties most often changed from

Physicians (47%) in WV who are aware of a doctor in their state who has changed specialties most commonly know of a doctor who changed from being an OB/GYN to a different type of doctor. About one in three (33%) know a doctor who moved from surgery to a different specialty, one in four (25%) a doctor who moved from emergency medicine to a different specialty, and about one in five (19%), a doctor who moved from anesthesiology to a different specialty.

QC4 Among doctors in your state who have changed their medical specialty, what were their specialties prior to changing?

Base: All respondents who know a doctor who has changed their specialty

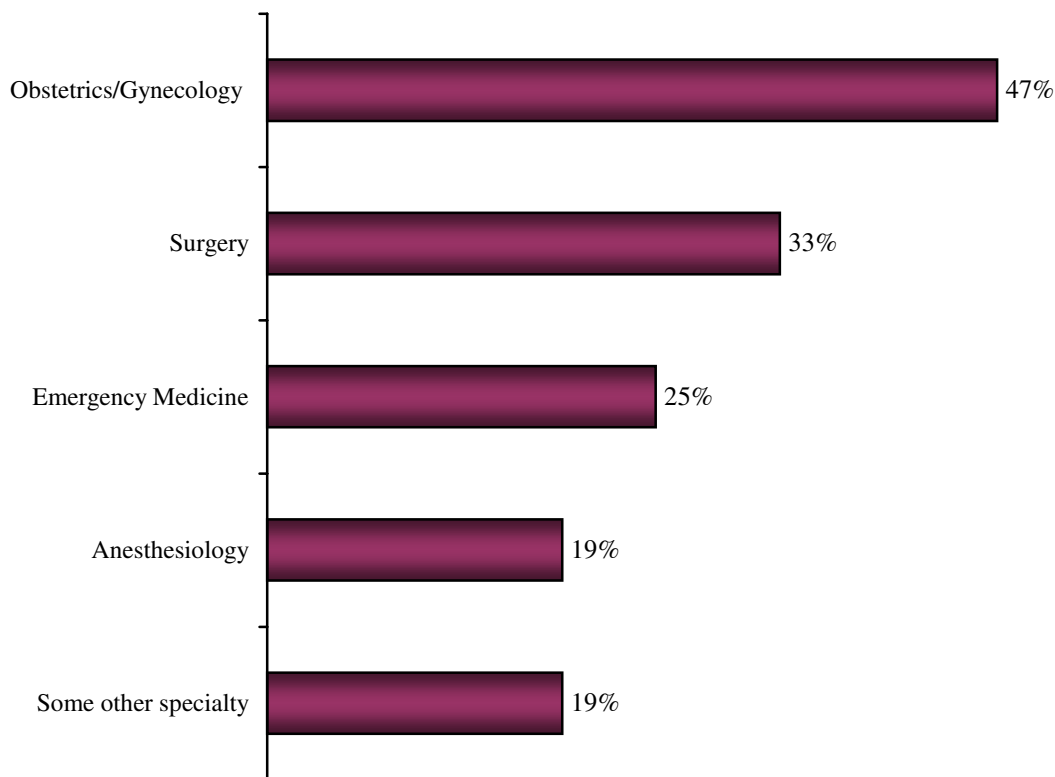


Table 16

Impact of Liability Concerns on Tests and Procedures

Overwhelming majorities of physicians in WV say that they have noticed the fear of malpractice liability cause physicians to order more tests than they would based only on professional judgment of what is medically needed (95%) and to refer patients to specialists more often than they would based only on professional judgment (93%). The vast majority of physicians in WV also say that they have noticed the fear of malpractice liability cause physicians to prescribe more medications such as antibiotics than they would based only on professional judgment of what is medically needed (79%) and suggest invasive procedures such as biopsies to confirm diagnoses more often than they would based solely on their professional judgment (77%).

QC5 Based on your experience, have you noticed the fear of malpractice liability causing physicians to . . .?

Base: All respondents

% “Yes”

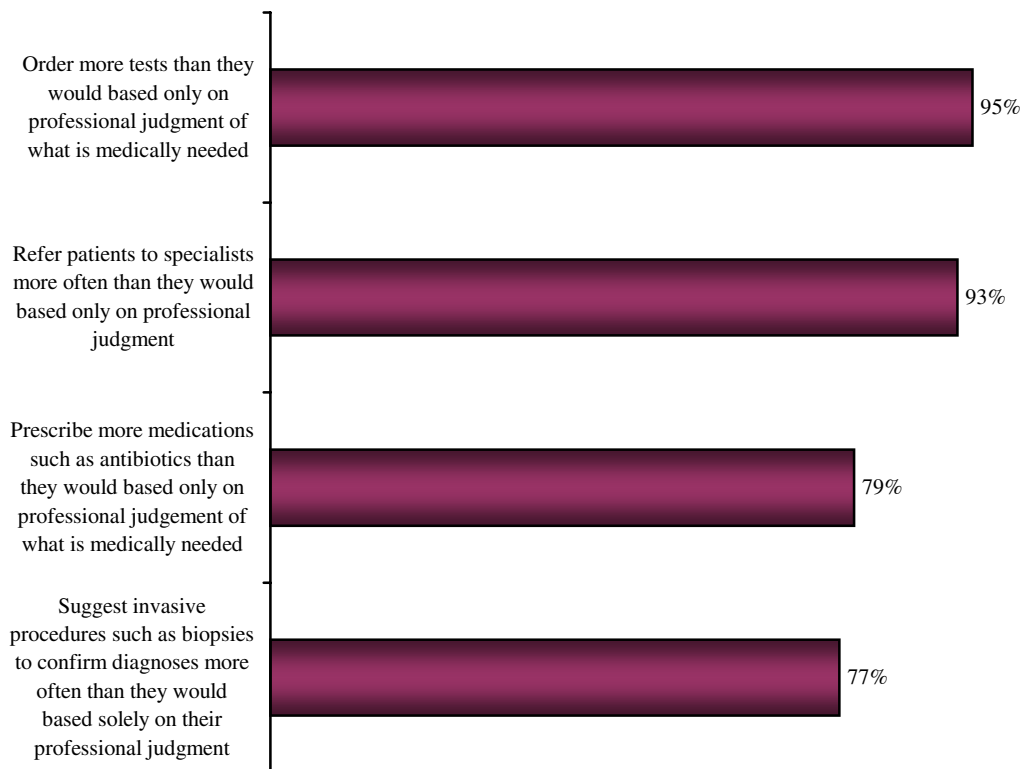


Table 17

Impact of Liability Concerns on Physicians Personal Behavior

Large majorities of physicians in WV say that the fear of malpractice liability has caused them personally to order more tests than they would based only on professional judgment of what is medically needed (84%) and to refer patients to specialists more often than they would based only on professional judgment (81%). More than half also say that the fear of malpractice liability has caused them to prescribe more medications such as antibiotics than they would based only on professional judgment of what is medically needed (53%) and suggest invasive procedures such as biopsies to confirm diagnoses more often than they would based solely on their professional judgment (59%).

QC5 Based on your experience, have you noticed the fear of malpractice liability causing physicians to . . . ?
 Base: All respondents

QC6 Do concerns about malpractice liability ever cause you to . . . ?
 Base: All physicians

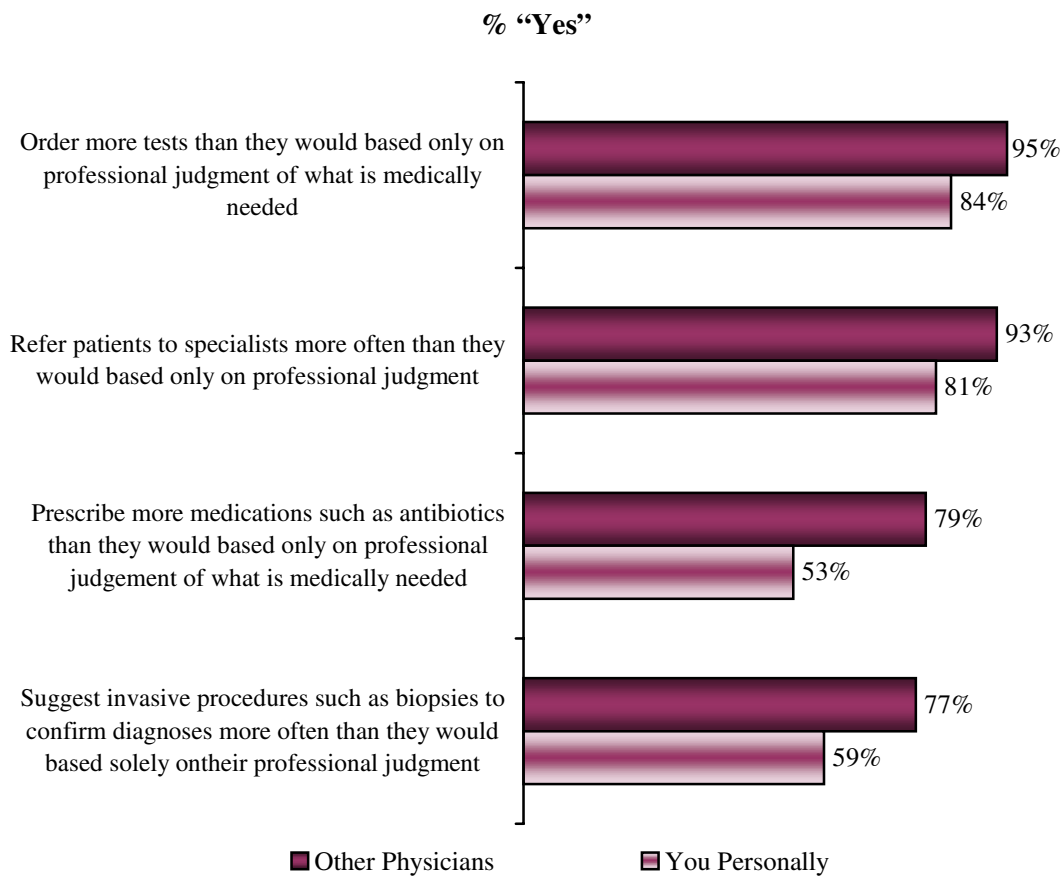


Table 18

Physicians Personally Avoiding Procedures

Two out of three (66%) physicians in WV say that they have personally avoided conducting certain procedures or interventions because of the risk of adverse outcomes and resulting medical liability.

QC7 Have you ever avoided personally conducting certain procedures or interventions because of the risk of adverse outcomes and resulting medical liability?

Base: All respondents

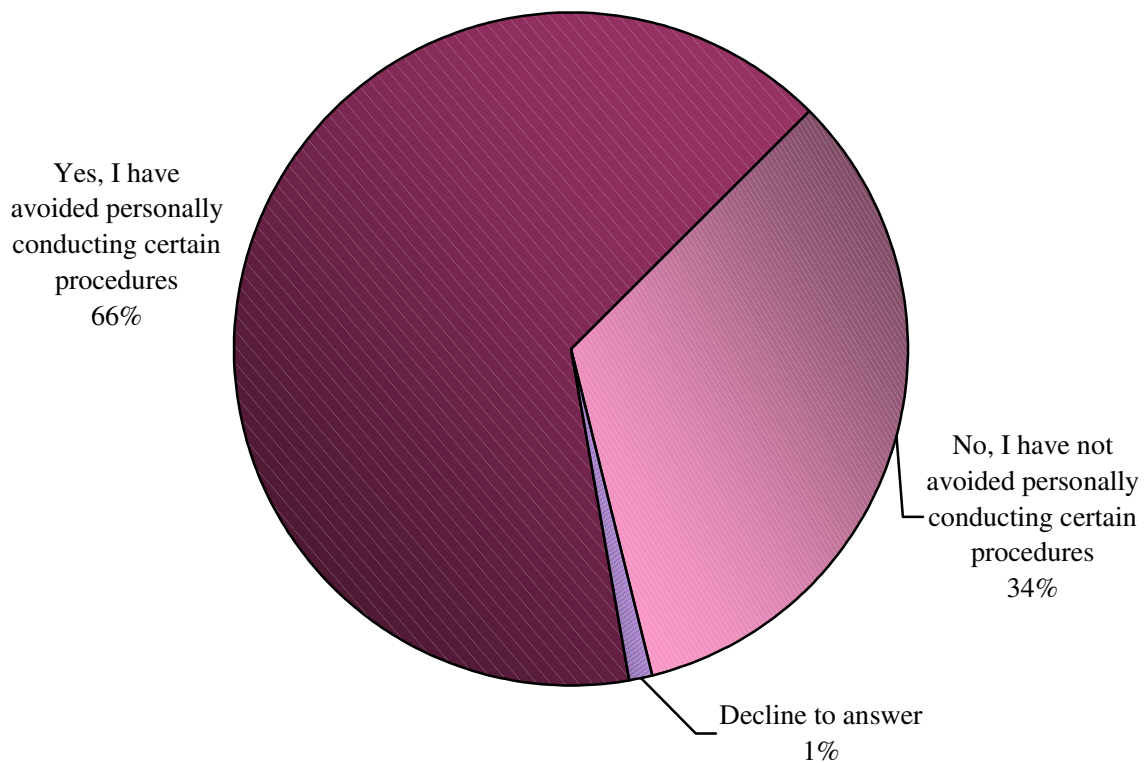


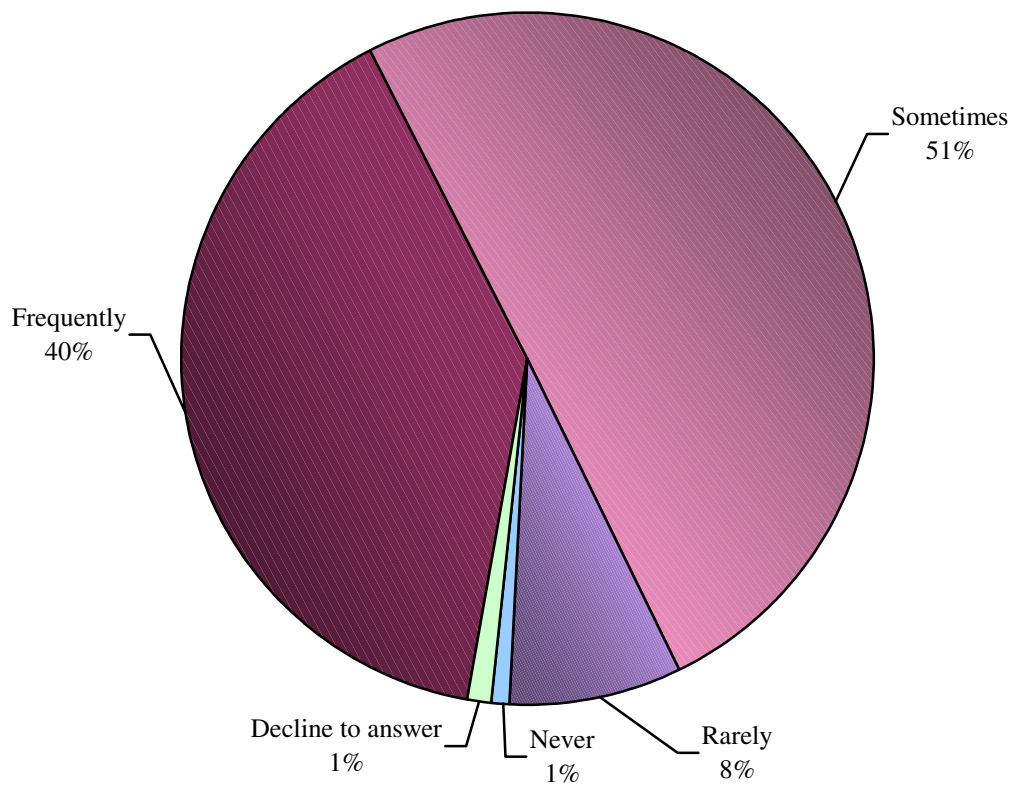
Table 19

Perceptions of Other Doctors' Avoiding Procedures

The overwhelming majority (91%) of physicians in WV feel that other doctors in their state sometimes avoid conducting certain procedures or interventions because of the risk of adverse outcomes and resulting medical liability. Four out of ten (40%) feel that other doctors in their state frequently avoid conducting certain procedures or interventions because of the risk of adverse outcomes and resulting medical liability.

QC8 How often do you feel other doctors in your state avoid personally conducting certain procedures or interventions because of the risk of adverse outcomes and the resulting medical liability?

Base: All respondents



COMPARISON WITH PHYSICIANS NATIONWIDE

Table 20

Quality of Medical Care Over Past Five Years – National Comparison

Physicians in West Virginia (23%) are somewhat less likely than physicians throughout the nation (31%) to think the ability of physicians and nurses to provide quality care has improved in the last five years. However, they are not more likely to think the ability to provide quality care has gotten worse (50% in WV and 51% nationwide); rather it has stayed about the same (26% in WV and 17% nationwide).

QA1 Setting aside improvements in technology or medical knowledge, do you think the ability of physicians and nurses to provide quality medical care to patients has improved, has gotten worse or is it about the same as it was five years ago?

Base: All respondents

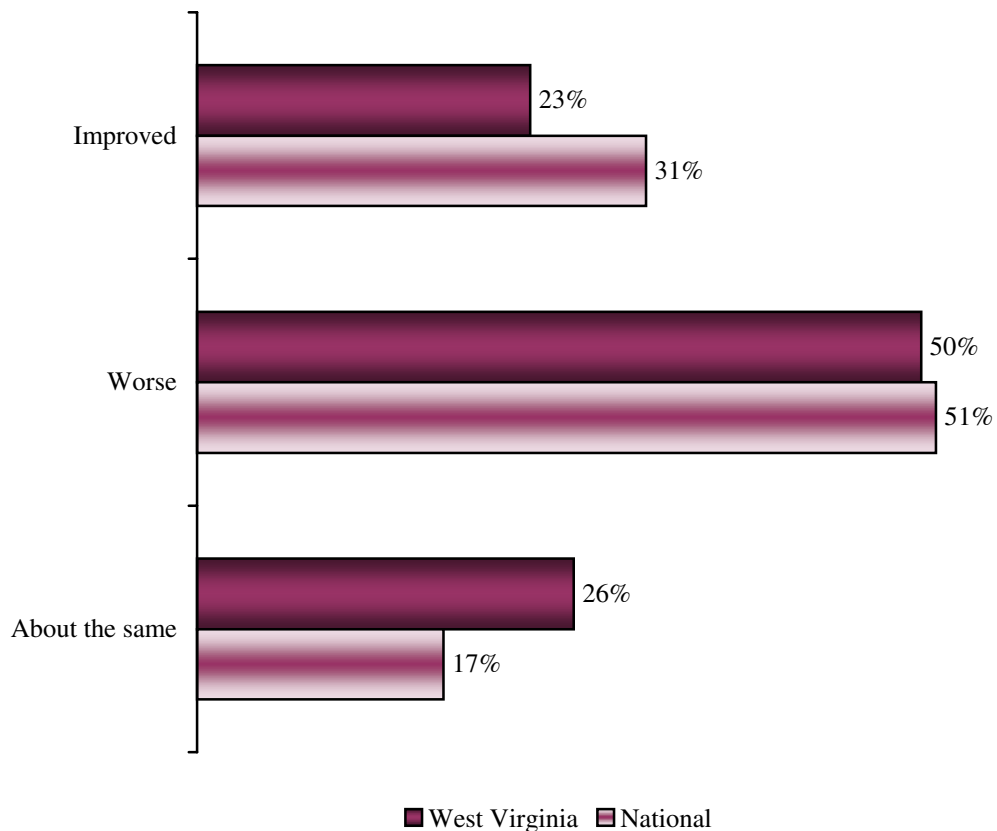


Table 21

Awareness of Malpractice Liability – National Comparison

Concern about the risk of malpractice liability for physicians in West Virginia (97%) is more likely to have increased since the beginning of their careers than for physicians nationwide (87%).

QB1 Since the beginning of your career, would you say your concern or awareness about the risk of malpractice liability has...?

Base: All respondents

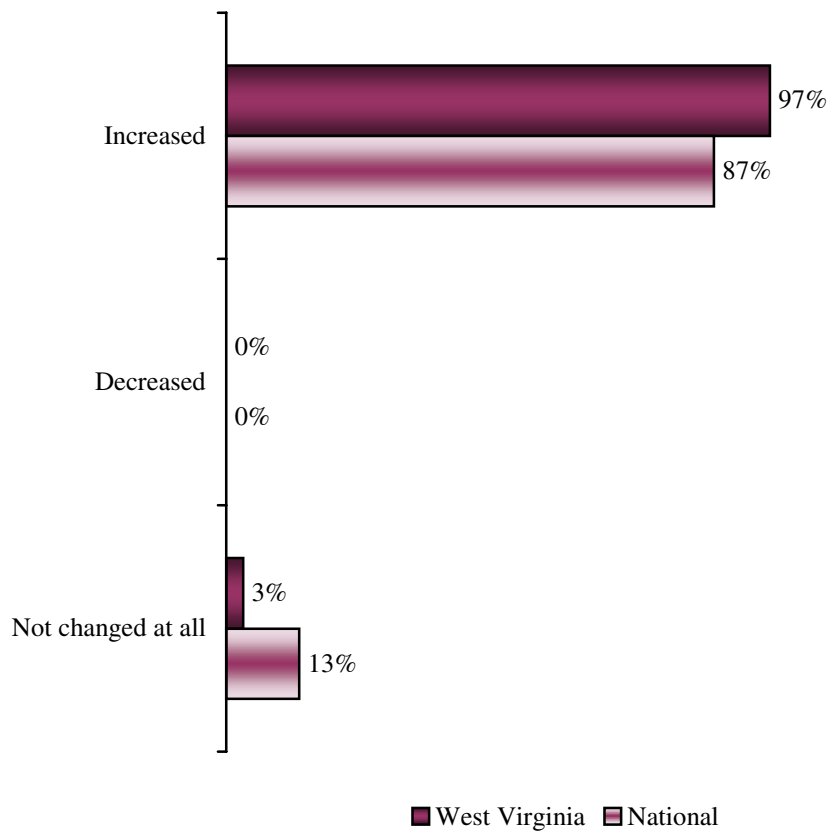


Table 22

Ability to trust the current justice system – National Comparison

Physicians in West Virginia (93%) are much more likely to disagree physicians can trust the current justice system to achieve a reasonable outcome than physicians nationwide (83%). Approximately two out of three (67%) physicians in West Virginia strongly disagree that the current justice system can be trusted compared to only four in ten (42%) nationwide.

QB2 If sued, do you agree or disagree that physicians can trust the current justice system to achieve a reasonable outcome?

Base: All respondents

	Physicians	
	West Virginia	National
Base:	289 %	300 %
Strongly/Somewhat Agree (Net)	6	17
Strongly agree	0	2
Somewhat agree	6	16
Strongly/Somewhat Disagree (Net)	93	83
Somewhat disagree	26	40
Strongly disagree	67	42
Decline to answer	1	-

Table 23

Cause of Malpractice Liability – National Comparison

Physicians in West Virginia and nationwide overwhelmingly believe that malpractice claims occur because of adverse results (98% in WV and 96% nationwide) rather than medical error (1% in WV and 4% nationwide).

QB3 Do you think malpractice claims occur mainly from actual error or mainly from adverse results?

Base: All respondents

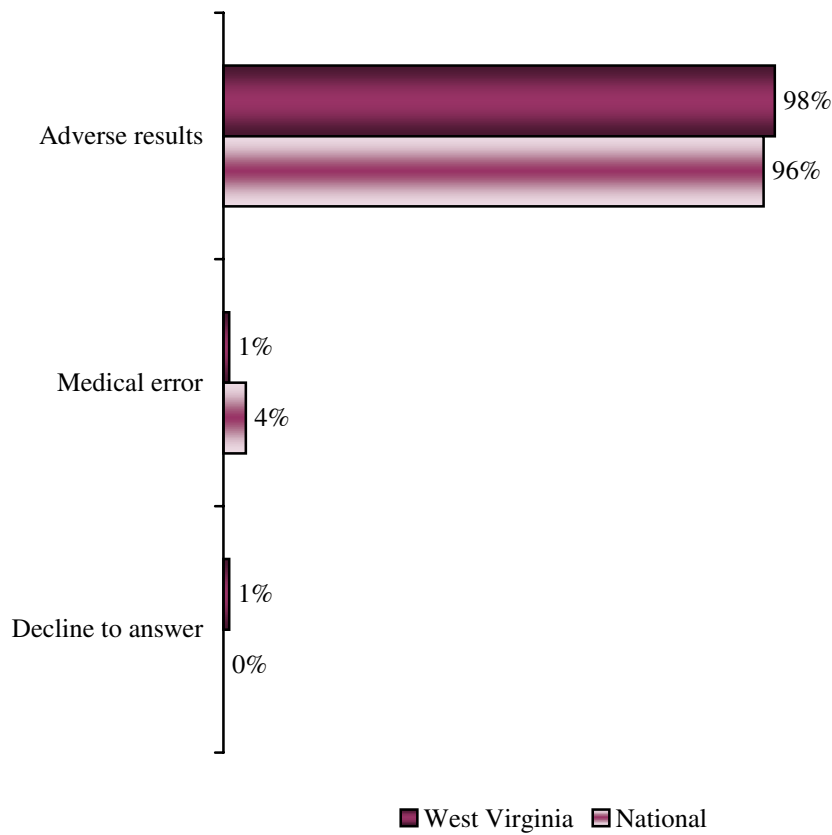


Table 24

Impact of Liability Concerns on Physician Behavior – National Comparison

In nearly all cases, physicians in West Virginia responded that other physicians in their state are more likely to order more tests (95% vs. 91% nationwide), refer patients to specialists more often (93% vs. 74% personally and 85% nationwide) and prescribe more medications (79% vs. 73% nationwide) due to fear of malpractice liability than physicians nationwide. Physicians in West Virginia (77%) were no more likely to suggest invasive procedures than physicians nationwide (73% nationwide).

QC5 Based on your experience, have you noticed the fear of malpractice causing physicians to...?

Base: All respondents

	Physicians	
	West Virginia	National
Base:	289 %	300 %
Order more tests than they would based only on professional judgment of what is medically needed	95	91
Refer patients to specialists more often than they would based only on professional judgments	93	85
Prescribe more medications such as antibiotics than they would based only on professional judgments	79	73
Suggest invasive procedures such as biopsies to confirm diagnoses more often than they would based solely on their professional judgments	77	73

Table 25

Impact of Liability Concerns on Personal Behavior – National Comparison

In nearly all cases, physicians in West Virginia responded that they personally are more likely to order more tests (84% vs. 79% nationwide), refer patients to specialists more often (81% vs. 74% nationwide) and prescribe more medications (53% vs. 41% nationwide) due to fear of malpractice liability than physicians nationwide. Physicians in West Virginia (59%) were no more likely to suggest invasive procedures than physicians nationwide (51% nationwide).

QC6 Do concerns about malpractice liability ever cause you to...?

Base: All respondents

	Physicians	
	West Virginia	National
Base:	289 %	300 %
Order more tests than you would based only on professional judgment of what is medically needed	84	79
Refer patients to specialists more often than you would based only on professional judgments	81	74
Prescribe more medications such as antibiotics than you would based only on professional judgments	53	41
Suggest invasive procedures such as biopsies to confirm diagnoses more often than you would based solely on your professional judgments	59	51

DEMOGRAPHICS

Table 26

Gender

QD1 Are you...?

Base: All respondents

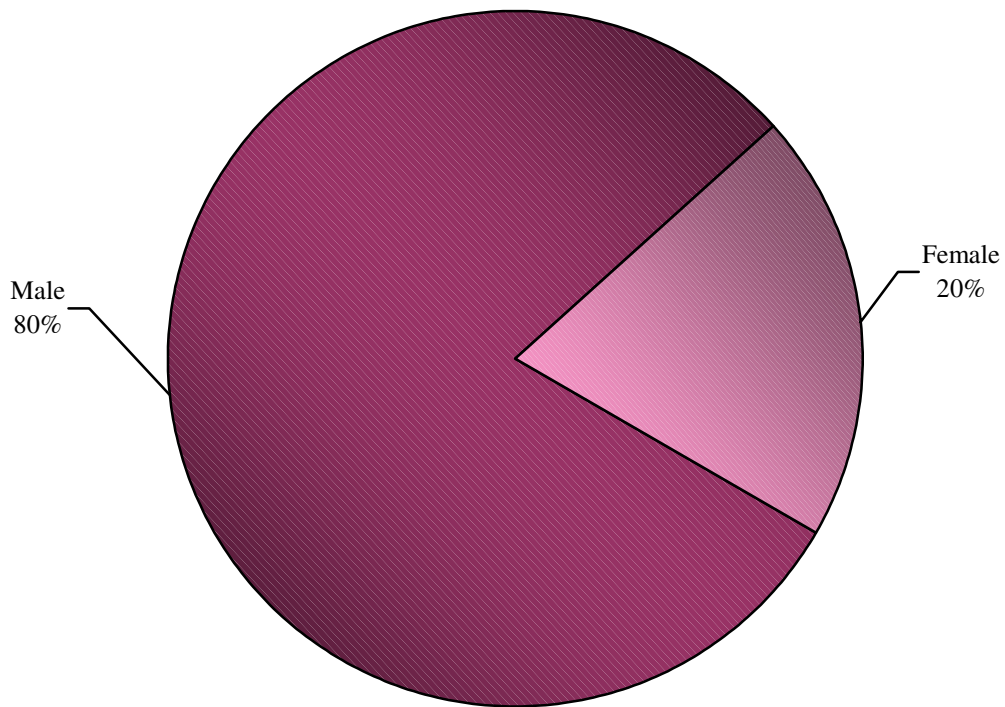


Table 27**Age**

QD2 In what year where you born?

Base: All respondents

	West Virginia Physicians
Base:	289 %
29-30	1
31-35	9
36-40	12
41-45	17
46-50	15
51-55	14
56-60	9
61-65	7
66-70	4
71-75	5
76 or more	5
Decline to answer	2

Table 28
Years in Practice

QD3 How long have you been in practice since you completed your residency?

Base: All respondents

	West Virginia Physicians
Base:	289 %
10 years or less	37
11 to 20 years	25
21 to 30 years	23
31 to 40 years	9
41 to 50 years	2
51 to 60 years	1
Decline to answer	2

Table 29

Type of Practice

QD4 Which of the following best describes your type of practice?

Base: All respondents

	West Virginia Physicians
Base:	289 %
Solo	30
Single specialty group	27
Multi-specialty group	11
Hospital	23
Other	9
Decline to answer	1

Table 30**Physician Specialty**

QD5 Which of the following best describes your specialty?

Base: All respondents

	West Virginia Physicians
Base:	289 %
Internal medicine	17
Family practice	14
OB/GYN	6
Anesthesiology	6
General surgery	6
Emergency medicine	6
Orthopedic surgery	5
Pediatrics	3
Psychiatry	3
General practice	2
Other specialty	30
Decline to answer	3

APPENDIX A: METHODOLOGY

METHODOLOGY

AN OVERVIEW

Harris Interactive Inc conducted *Malpractice Liability in West Virginia* for The U.S. Chamber Institute for Legal Reform. The final results are based on interviews with a representative sample of 289 physicians. Interviews averaging 10 minutes in length took place between October 2 and November 6, 2002. The physician interviews were conducted via U.S. postal service mail and the results were weighted using the AMA Physician Masterfile to be representative of physicians in West Virginia. The following provides a more detailed description of the sampling and interviewing procedures used.

SAMPLING AND WEIGHTING

Harris Interactive conducted a mail survey with 289 West Virginia physicians. The questionnaires were sent to the physicians along with letters describing the survey and asking them to participate. To maximize response rate, physicians received an incentive of \$40 with their survey. After completing the survey, the physicians were asked to mail return them postage paid to Harris. The surveys were mailed to a total of 600 physicians on October 2, 2002. This study includes completed surveys received by November 6, 2002.

The physicians were randomly selected from the American Medical Association (AMA) Physician Masterfile. The data was weighted by gender, years in practice, type of practice and specialty according to targets derived from the AMA.

EDITING AND CLEANING THE DATA

The data-processing staff perform machine edits and additional cleaning for the entire data set. Our edit programs act as a verification of the skip instructions and other data checks that are written into the online program. The edit programs list any errors by case number, question number and type. These are then resolved by senior personnel, who inspect the original file and made appropriate corrections. Complete records are kept of all such procedures.

SIGNIFICANCE TESTING*Reliability of Survey Percentages*

It is important to bear in mind that the results from any sample survey are subject to sampling variation. The magnitude of this variation (or error) is affected both by the number of interviews—the base size—and by the level of the percentages expressed in the results.

Table A-1 shows the possible sample variation that applies to percentage results for this survey. The chances are 95 in 100 that a survey result does not vary, plus or minus, by more than the indicated number of percentage

points from the result that would have been obtained if interviews were conducted with all persons in the universe represented by the sample. For example, if the response for a sample size of 300 is 30%, then in 95 cases out of 100, the response in the total population would have been between 25% and 35% (+/-5%). Note that survey results based on subgroups of small size can be subject to large sampling error.

Table A-1

Recommended Allowance for Sampling Error of Proportions (Plus or Minus)

Sample Size	Survey Percentage Result				
	10% or 90%	20% or 80%	30% or 70%	40% or 60%	50%
300	3	5	5	6	6
200	4	6	6	7	7
100	6	8	9	10	10
50	8	11	13	14	14

Significance of Differences Between Proportions

Sampling tolerances are also involved in the comparison of results from different surveys or from different parts of a sample from the same survey (subgroup analysis). Table A-2 shows the percentage difference that must be obtained before a difference can be considered statistically significant. These figures, too, represent the 95% confidence level.

To illustrate, suppose the two percentages in question are 34% and 25%. More specifically, suppose that one group of 300 has a response of 34% “yes” to a question, and an independent group has a response of 25% to the same question, for an observed difference of 9 percentage points. According to the table, this difference is subject to a potential sampling error of 6-7 percentage points. Since the observed difference is greater than the sampling error, the observed difference is significant.

Table A-2
Sampling Error of Difference Between Proportions
 Approximate Sampling Tolerances (at 95% Confidence Level)
 To Use in Evaluating Differences Between Two Percentage Results

Sample Sizes	Survey Percentage Result				
	10% or 90%	20% or 80%	30% or 70%	40% or 60%	50%
300 v. 300	5	6	7	8	8
200	5	7	8	9	9
100	7	9	10	11	11
50	9	12	14	15	15
200 v. 200	6	8	9	10	10
100	7	10	11	12	12
50	9	12	14	15	15
100 v. 100	8	11	13	14	14
50	10	14	16	17	17
50 v. 50	12	16	18	19	20

Sampling error of the type so far discussed is only one type of error. Survey research is also susceptible to other types of error, such as refusals to be interviewed (non-response error), question wording and question order, interviewer error, and weighting by demographic control data. Although difficult or impossible to quantify these types of error, the procedures followed by Harris Interactive, Inc. keep errors of these types to a minimum.

APPENDIX B: DATASHEETED QUESTIONNAIRE

Section A – Health System Overview

Thank you for agreeing to participate in this survey. The questions that we will ask are about important medical care issues.

A1. Setting aside improvements in technology or medical knowledge, do you think the ability of physicians and nurses to provide quality medical care to patients has improved, has gotten worse or is it about the same as it was five years ago?

Improved	23
Worse	50
About the same	26
Decline to answer	*

A2. Do you believe that there is a surplus, shortage or about the right amount of doctors in your state generally?

Surplus	*
Shortage	90
About the right amount	10

➔ **IF YOU BELIEVE THERE IS A SHORTAGE, ANSWER A3. OTHERWISE, SKIP TO A4.**

A3. Which of the following do you believe are responsible for the shortage of doctors in your state? *Please select all that apply.*

Malpractice liability in the state	99
Fees too low	41
Quality of life/cost of living	27
Quality of hospitals	8
Other (please specify below)	15
Decline to answer	1

A4. Do you believe that there is a surplus, shortage or about the right amount of doctors in high-risk specialties in your state?

Surplus	*
Shortage	95
About the right amount	4

➔ **IF YOU BELIEVE THERE IS A SHORTAGE, ANSWER A5. OTHERWISE, SKIP TO A6.**

A5. Which of the following do you believe are responsible for the shortage of doctors in high-risk specialties in your state? *Please select all that apply.*

Malpractice liability in the state	98
Fees too low	42
Quality of life/cost of living	24
Quality of hospitals	10
Other (please specify below)	9
Decline to answer	*

A6. Are you aware of patients in your state having trouble...?

	Yes	No	Decline to answer
Obtaining OB/GYN services	80	16	4
Getting reasonable access to trauma services	83	14	3

A7. Are you aware of hospitals in your state having trouble recruiting...?

	Yes	No	Decline to answer
Anesthesiologists	67	22	11
Emergency medicine physicians	59	25	16
OB/GYN	83	11	6
Surgeons	79	13	8
Any other specialties (please specify below)	56	4	39

A8. How much do you believe shortages could be alleviated by changes in the malpractice liability system?

A great deal	73
Somewhat	24
Not much	1
Not at all	*
Decline to answer	1

Section B – Perceptions of State Medical Malpractice System

B1. Since the beginning of your career, would you say your concern or awareness about the risks of malpractice liability has...?

Increased	97
Decreased	-
Not changed at all	3

B2. If sued, do you agree or disagree that physicians can trust the current justice system to achieve a reasonable result?

Strongly agree	*
Somewhat agree	6
Somewhat disagree	26
Strongly disagree	67
Decline to answer	1

B3. Do you think malpractice claims occur mainly from actual error or mainly from adverse results?

Medical error	1
Adverse results	98
Decline to answer	1

B4. How much do you think the malpractice system limits the ability of doctors in your state to provide the highest quality medical care possible?

A great deal	56
Somewhat	39
Not much	4
Not at all	2

Section C – Possible Effects of State Medical Malpractice system

C1. Has concern over unreasonable malpractice liability caused you to...? *Please select all that apply.*

- Consider practicing medicine in another state **65**
- Consider retiring early **41**
- Consider leaving the practice of medicine **30**
- Consider changing your medical specialty **6**
- None of these **10**
- Decline to answer **1**

C2. As far as you know, does concern over unreasonable malpractice liability frequently, sometimes, rarely or never cause other doctors in your state to...?

	Never	Rarely	Sometimes	Frequently	Decline to answer
Consider retiring early	1	2	35	61	1
Consider leaving the practice of medicine	3	16	41	37	3
Consider practicing medicine in another state	1	1	18	78	3
Consider changing their medical specialty	10	42	31	11	6

C3. As far as you know, does concern over unreasonable malpractice liability frequently, sometimes, rarely or never cause other doctors in your state to...?

	Never	Rarely	Sometimes	Frequently	Decline to answer
Actually retire early	1	7	54	35	2
Actually leave the practice of medicine	8	30	38	18	5
Actually begin practicing medicine in another state	-	2	38	56	4
Actually change their medical specialty	14	50	21	8	7

➔ **IF YOU KNOW A DOCTOR WHO HAS CHANGED THEIR SPECIALTY, ANSWER C4. OTHERWISE, SKIP TO C5**

C4. Among doctors in your state who have changed their specialty, what were their specialties prior to changing? *Please select all that apply.*

- Obstetrics/Gynecology **47**
- Surgery **33**
- Anesthesiology **19**
- Emergency medicine **25**
- Some other specialty (please specify below) **19**

C5. Based on your experience, have you noticed the fear of malpractice liability causing physicians to...?

	Yes	No	Decline to answer
Order more tests than they would based only on professional judgment of what is medically needed	95	4	1
Prescribe more medications such as antibiotics than they would based only on professional judgment of what is medically needed	79	19	3
Refer patients to specialists more often than they would based only on professional judgments	93	6	1
Suggest invasive procedures such as biopsies to confirm diagnoses more often than they would based solely on their professional judgment	77	21	2

C6. Do concerns about malpractice liability ever cause you to...?

	Yes	No	Decline to answer
Order more tests than you would based only on professional judgment of what is medically needed	84	14	3
Prescribe more medications such as antibiotics than you would based only on professional judgment of what is medically needed	53	42	4
Refer patients to specialists more often than you would based only on professional judgments	81	17	2
Suggest invasive procedures such as biopsies to confirm diagnoses more often than you would based solely on your professional judgment	59	39	2

C7. Have you ever avoided personally conducting certain procedures or interventions because of the risk of adverse outcomes and resulting medical liability?

- Yes, I have avoided personally conducting certain procedures **66**
- No, I have not avoided personally conducting certain procedures **34**
- Decline to answer **1**

C8. How often do you feel other doctors in your state avoid personally conducting certain procedures or interventions because of the risk of adverse outcomes and resulting medical liability?

- Frequently **40**
- Sometimes **51**
- Rarely **8**
- Never **1**
- Decline to answer **1**

Section D – Demographics**D1. Are you...?**

Male	80
Female	20

D2. In what year were you born?

Age	
29-30	1
31-35	9
36-40	12
41-45	17
46-50	15
51-55	14
56-60	9
61-65	7
66-70	4
71-75	5
76 or more	5
Decline to answer	2

D3. How long have you been in practice since you completed your residency?

10 years or less	37
11 to 20 years	25
21 to 30 years	23
31 to 40 years	9
41 to 50 years	2
51 to 60 years	1
Decline to answer	2

D4. Which of the following best describes your type of practice?

Solo	30
Single specialty group	27
Multi-specialty group	11
Hospital	23
Other	9
Decline to answer	1

D5. Which of the following best describes your specialty?

Internal medicine	17
Family practice	14
OB/GYN	6
Anesthesiology	6
Emergency medicine	6
General surgery	6
Orthopedic surgery	5
Pediatrics	3
Psychiatry	3
General practice	2
Other specialty (please specify below)	30
Decline to answer	3

THANK YOU FOR PARTICIPATING IN THIS STUDY.

*Please return your completed questionnaire
in the enclosed postage-paid envelope to:*

*Harris Interactive
5 Independence Way
Princeton, NJ 08543-5305*