



## New York Doctors Seek Malpractice Moratorium

By [E.B. SOLOMONT](#), Staff Reporter of the Sun  
June 27, 2008

[New York](#) physicians are asking for a moratorium on a medical malpractice insurance rate hike that state insurance officials are expected to announce next week.

The rates, set each year by the state's Insurance Department, are expected to go up by as much as 9% on July 1, physicians and insurance industry sources said. By law, the agency could also impose an additional 8% levy on doctors to supplement the reserves of the malpractice insurance carriers, which might otherwise be exhausted in the near future.

The rate hike comes just as doctors nationwide are bracing for reduced payments from the federal government, which is scheduled to cut fees by 10.6% to doctors who treat Medicare patients. The House of Representatives passed legislation to reverse the reimbursement cut — which is also expected to take effect July 1 — but President Bush has threatened to veto the legislation.

"It's a perfect storm," the president of the Medical Society of the State of New York, Dr. Michael Rosenberg, said. Facing the double whammy, he said, doctors in New York are pushing state insurance officials to enact regulatory programs that would offer them financial relief while they wait for legislators to return to Albany to consider ways to change the state's medical malpractice system. Last year, Governor Spitzer convened a task force charged with making recommendations to fix a "broken" malpractice system, but no recommendations were put forth.

"In our terms, we're putting pressure on the wound so it doesn't hemorrhage," Dr. Rosenberg said, suggesting that any increase in malpractice premiums be delayed until the legislature acts.

A spokesman for the state's Insurance Department declined to comment, but any rate increase or assessment on doctors would follow a 14% increase in malpractice insurance rates that went into effect last summer. The rates, set by the department, vary by county and specialty. Currently, brain surgeons in Brooklyn pay \$267,000 a year for malpractice insurance, while obstetricians in Queens pay \$180,490.

"These premiums are exorbitant," the vice president of the Medical Liability Mutual Insurance Company, Edward Amsler, conceded. But he said the rates under the Pataki administration were artificially low. "The problem is that in order to pay the claims as they come in, in our tort system, this is the amount of money that needs to be charged to do that," he said.

Stakeholders who participated on Mr. Spitzer's task force — including hospital and doctor groups, consumer advocates, and trial lawyers — said Mr. Spitzer's resignation this spring halted negotiations that were taking place. Discussions slowed even further during the transition to Governor Paterson. Talks picked up in recent weeks, but some speculated that the announcement by Senator Joseph Bruno that he would not seek re-election derailed negotiations at the last minute. Ultimately, lawmakers passed a physician discipline bill that gives the state's Department of Health more power to investigate doctors and to publicize charges of professional misconduct, but legislators did not consider legislation relating to medical malpractice insurance.

"I was expecting recommendations to come practically up to the last day of session and I was surprised that we did not get a package of recommendations weeks ago," the chair of the Assembly's health committee, Richard Gottfried, said. "It is somewhat mystifying."

Absent legislative change, the state's medical society is encouraging the Insurance Department to enact regulations that do not require the legislature's approval as a way of offering financial relief to physicians. One initiative would offer a 10% discount on premiums to doctors who sign a "consent to settlement" agreement with carriers, whereby the carrier would be able to settle claims against a physician on their behalf. Another initiative would increase a discount on premiums for physicians who take risk-management courses to 7.5% from 5%.

"It's a short-term, Band-Aid type of solution," a past president of the medical society and a member of the medical malpractice insurance task force, Dr. Richard Peer, said.

Still, doctors who have threatened to retire or leave New York because of escalating costs and what they said is a litigious environment renewed their threats on the eve of an expected rate increase.

"If they do it, I'll just pack it in," a Westchester neurosurgeon, Dr. Thomas Lansen, said. "It's a wrenching decision, but the anxiety of being sued for malpractice in this state is so overwhelming," the 60-year-old physician said. "I've had enough."

A [Manhattan](#) obstetrician and reproductive endocrinologist, Dr. Mitchell Essig, said the system is stacked against physicians. "We all go into this with the best of intentions, but we're all only human and people don't expect just human, they expect superhuman.