

MITIGATING NUCLEAR LAWSUIT VERDICTS



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WHY MEDICAL MALPRACTICE DEFENSE?



AGENDA

- Trends in Nuclear Verdicts
- Pre-Litigation Tactics
- Mid-Litigation Tactics
- What Can We Do?

WHAT IS A NUCLEAR VERDICT?

Traditional definition: > \$10 million

More accurate: “Shocks the Conscience”

- Disproportionate non-economic damages

Figure 1: Nuclear Verdicts by Case Type, 2010 – 2019

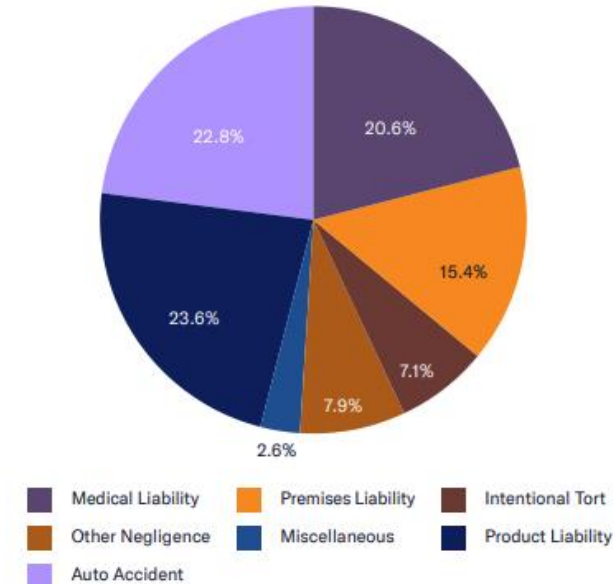


Table 1: Mean Nuclear Verdict by Litigation Type, 2010 – 2019

Litigation Type	Mean Nuclear Verdict
Product Liability	\$191.6 Million
Intentional Tort	\$90.6 Million
Other Negligence	\$40.8 Million
Medical Liability	\$36.8 Million
Auto Accident	\$33.8 Million
Premises Liability	\$31.7 Million
Miscellaneous	\$28.4 Million
All Personal Injury / Wrongful Death	\$76 Million

NUCLEAR VERDICTS BY STATE

Figure 5: Top 10 States by Cumulative Nuclear Verdicts, 2010 – 2019

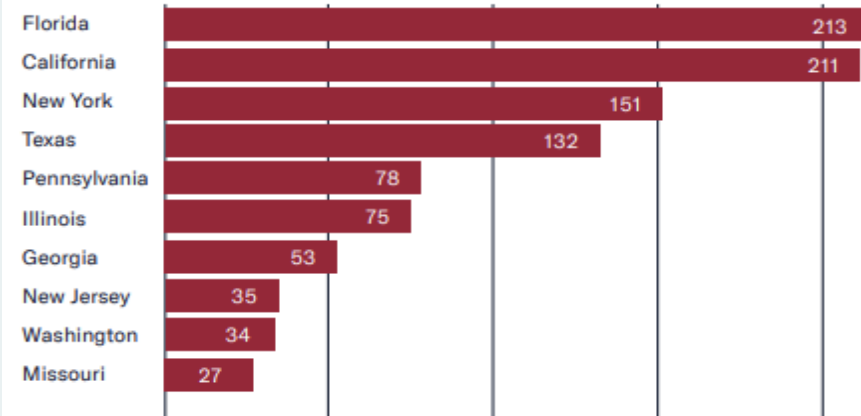


Table 2: Top 10 States by Per Capita Nuclear Verdicts, 2010 – 2019

State	Per Capita Rank	Cumulative Rank (From Figure 5)	Average State Population	Nuclear Verdicts per 100K People
Florida	1	1	20,109,631	1.059
New York	2	3	19,560,913	0.772
Pennsylvania	3	5	12,774,637	0.611
Illinois	4	6	12,822,325	0.585
California	5	2	38,618,190	0.546
Alabama	6	—	4,845,320	0.537
New Mexico	7	—	2,087,643	0.527
Georgia	8	7	10,147,472	0.522
Wyoming	9	—	577,786	0.519
Texas	10	4	27,172,097	0.486

Alabama Civil Justice System Costs by the Numbers

\$3,286

Cost per Household

Straining the finances of Alabamians and small businesses even further at a time when affordability is a top concern.

2.26%

Percentage of GDP

Alabama is ranked 13th in highest litigation costs in America as a percentage of its state GDP (2.1% is the national average)

\$6.4 Billion

Total AL Costs

A 24% increase from 2016 (\$5.2 Billion), including a 60.5% increase in medical liability costs (\$157 million to \$252 million) and a 41.1% increase in auto liability costs (\$2.07 billion to \$2.92 billion)

6.6%

Average Growth Rate of Costs

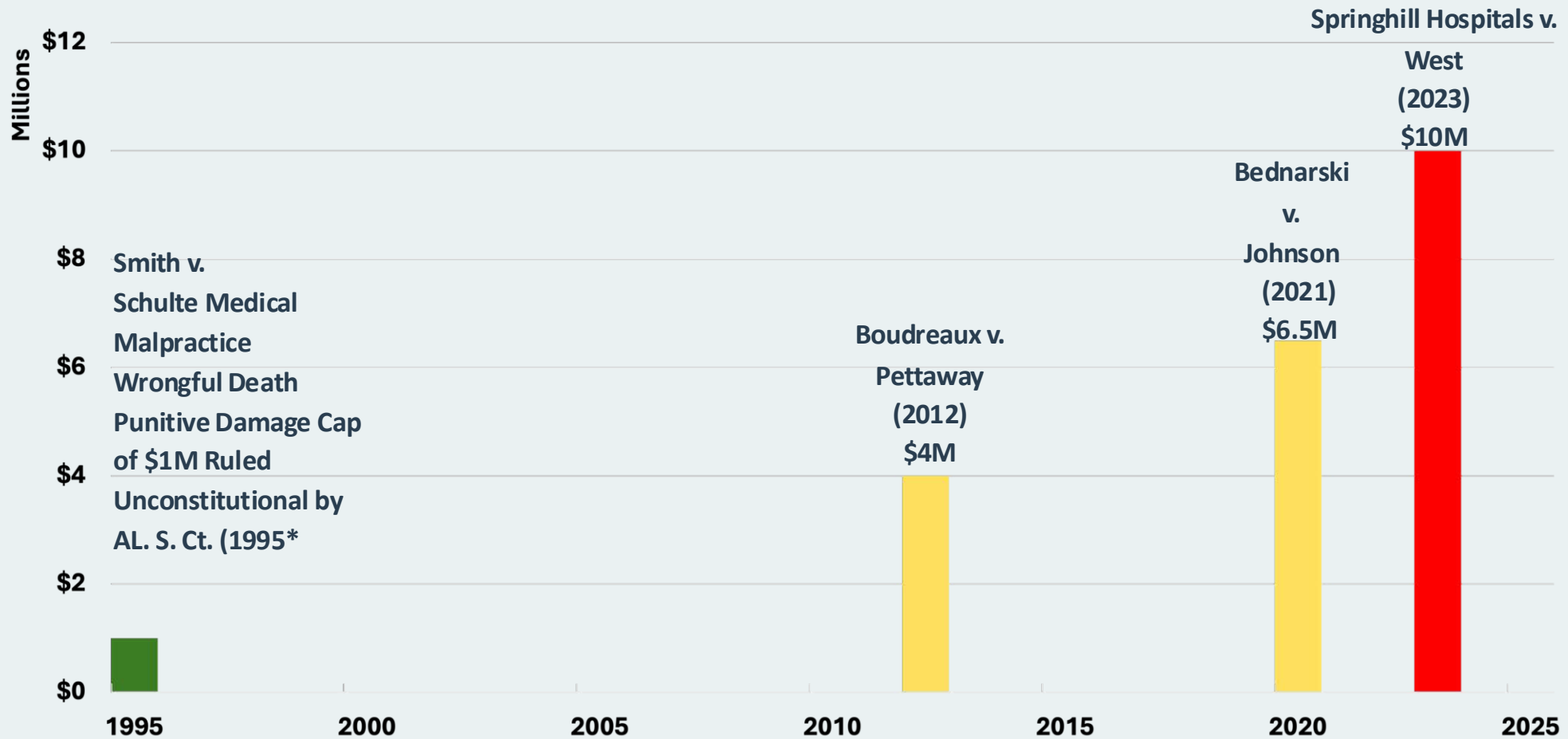
Outpacing the average growth rate for both national GDP (5.4%) and inflation (3.4%) during that same period (2016-2022).

How we got here

RECENT (& NOT SO RECENT) HISTORY



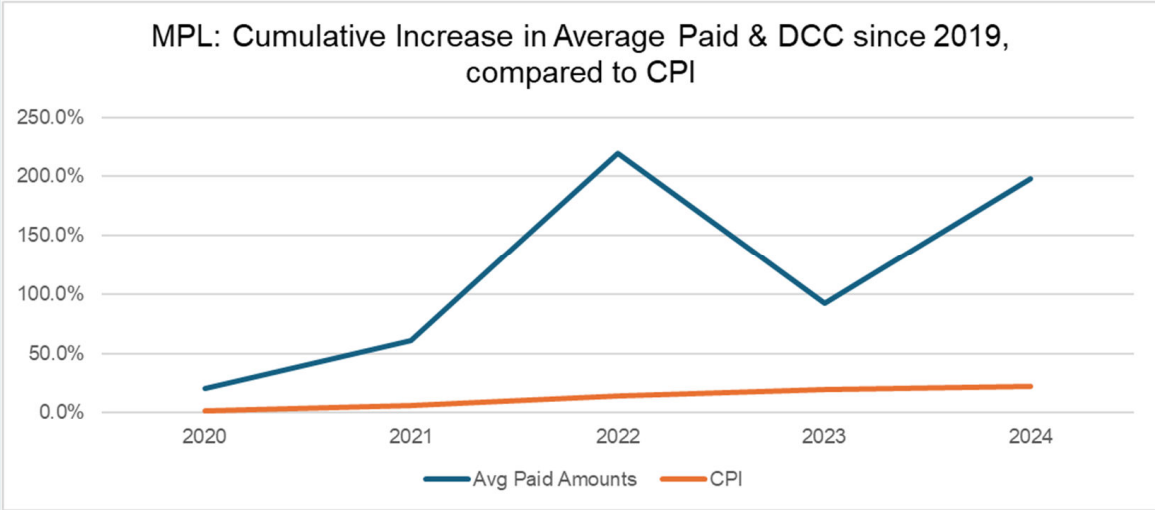
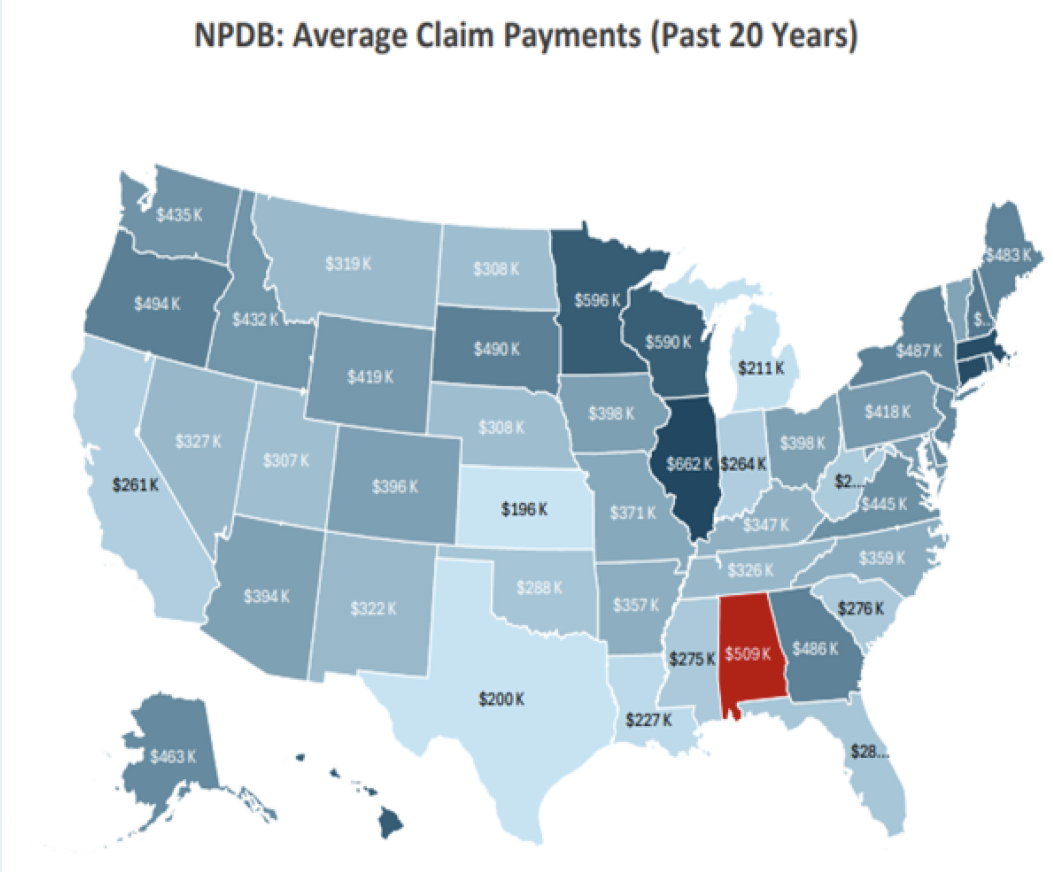
ALABAMA'S MEDICAL MALPRACTICE HISTORY



Haas v.
Galla**
(2026)
\$50M

**Recent
Trial Court
Verdict.
Damages
award may
be reduced
on appeal

AL MEDICAL MALPRACTICE LIABILITY TRENDS



According to the National Practitioner Database, over the past 20 years, Alabama is *the regional leader* and *9th in the Nation* in amount paid per medical liability claim.



What has changed?

- **Lawyer Advertising** - Lottery mentality - \$2.5 billion total - 2024 ¹
- **Third Party Litigation Finance (TPLF)** - 15.2 billion - 2023 ²
- **Juror Sentiment** - *punish corporations*
- **Evolution of the Plaintiff firm** - *big business*
- **Social Inflation and anchoring**
- **Only 53 cents of every dollar goes to the plaintiffs** ³

¹ American Tort Reform Association

² Westfleet Advisors

³ Chamber of Commerce - Institute for Legal Reform

PRE-LITIGATION MITIGATION TACTICS

WHERE DO MALPRACTICE SUITS COME FROM?

1. Misdiagnosis / Failure to Diagnose

- 2022 Study from the Medical Professional Liability Association (MPLA) found that around 8/10 claims are related either to misdiagnosis or failure to diagnose

2. Birth Injuries

3. Treatment and Medication Errors

- Patient-specific effects of medication
- Releasing patient too early from medical care.
- Ordering wrong or failing to order medical tests
- No post-treatment instruction
- Leaving surgical tools inside a patient

4. Wrongful Death

Specialty	% Ever Sued
Surgeons	90%
OB/GYNs and Women's Health Specialists	85%
Orthopedic Surgeons	82%
Cosmetic Surgeons	73%
Otolaryngologists (ENTs)	72%
Radiologists	72%
Urologists	72%
Emergency Medicine Physicians	71%
Intensivists (Critical Care)	66%
Cardiologists	64%
Gastroenterologists	64%
Neurologists	59%
Anesthesiologists	57%
Dermatologists	Low
Psychologists	Low

WHAT CAN YOU DO?

Understand Malpractice Criteria

- Standard of Care / Causation

Excellent Patient Care

- Follow evidence-based guidelines
- Know your limits
- Watch for high-risk conditions
- Internal checks
- Patient tracking systems

Communication is Key

- Patient relationships
- Ensure understanding / informed consent
- Encourage team feedback

Documentation

- “If it is not documented, it did not happen”
- Train your team to provide thorough documentation
- Document recommendations
- Objective language
- Never alter charts

MID-LITIGATION MITIGATION TACTICS

DEPOSITION

Ticket to success

- Bound by testimony
- Good deposition can devalue the case

Preparation is Key

- Review the entire chart for plaintiff-patient
- Be familiar with interrogatory responses

Demeanor and Tone

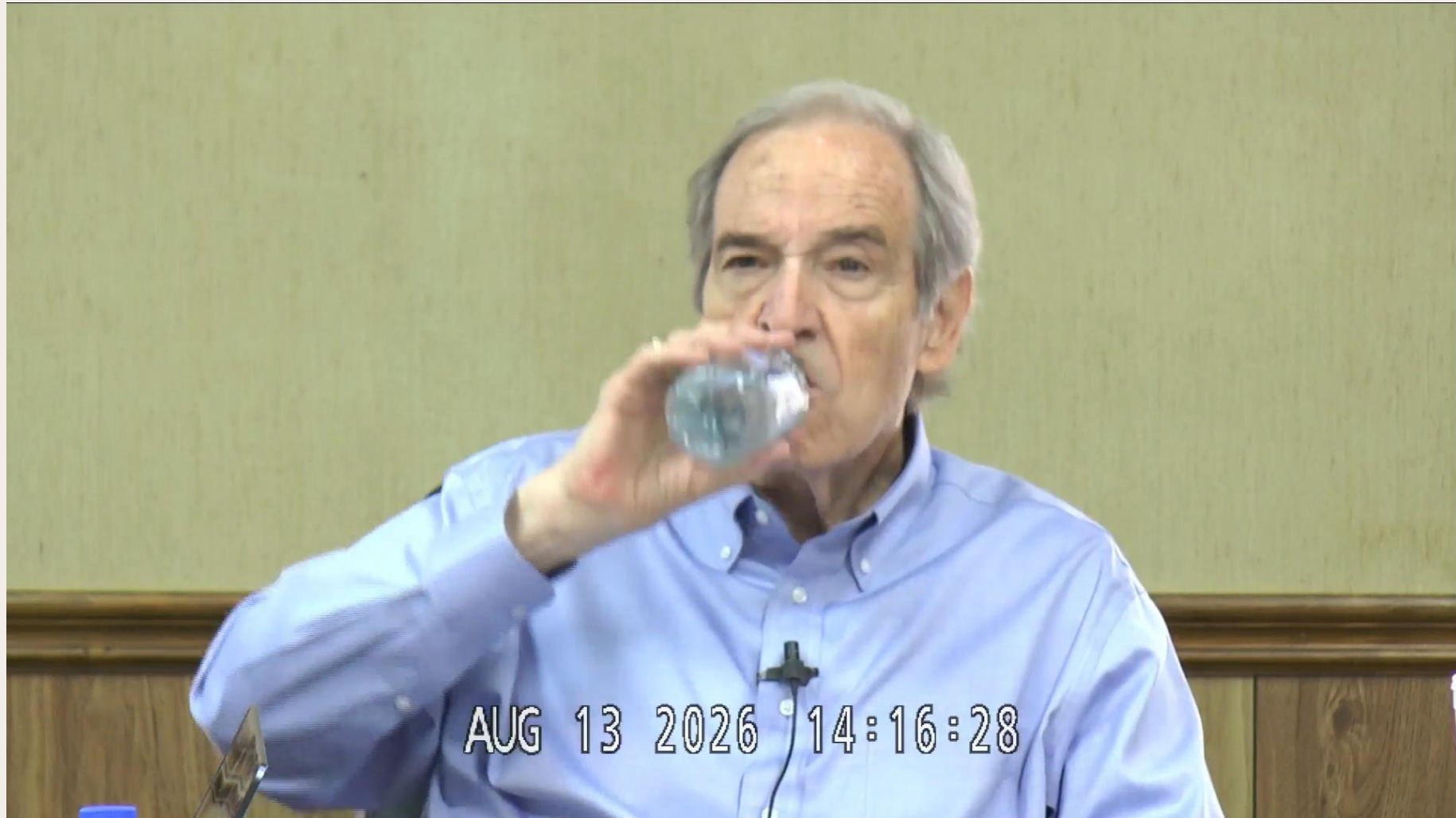
- Opposing counsel wants to inflame you – helps them at trial
- Quiet confidence – defend your actions!

Express Compassion for Patients

Let's Look at Some Examples...



Another Example...



A few final examples...

9 Q. I understand that in a case where
0 there's multiple defendants that there is
1 understandably some, you know, everybody
2 comes into deposition I believe this trying
3 to tell the truth but there's a lot of
4 pressures on them especially in a case with
5 multiple defendants especially when some of
6 those multiple defendants include people
7 that they know and have relationships with
8 whether those are purely professional as I
9 have and a lot of people have work friends.
0 I get all that.

1 I want to ask you, I see things in
2 my job that most of the things I see are
3 normal I say okay, that lawyer did that,

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1 that makes sense, that lawyer did that,
2 that makes sense. And then things happen
3 where I go that's out of the ordinary.
4 That's not how it normally happens. And
5 then I see things from time to time and I
6 go wow, that is crazy that that happened.
7 I mean, just asking you honestly when you
8 heard that Mr. Mitchell was discharged in
9 the middle of the night to a nursing home
0 is that something that you just thought
1 that is insane that that happened?

2 MS. MOON: Object to the form.

3 MR. KENNEDY: Object to the form.

4 You can answer.

5 A. Yes, sir.

Q: Can you summarize what kind of care you gave to this patient based on your review of the chart and the films?

A: I do not remember the patient and just pulled the chart out now. I think there was an issue with this guy not paying his bills, but you would have to ask my office manager. I don't handle or know the details about the money part of the practice.

As I look at the chart, I can't really read the writing on my notes about what I told him about the tooth—other than I think it looked fairly bad. I don't know what I said to him about the extraction risks, but that would be in my consent form. As I look now, I don't see a consent form in the chart. My staff never seems to get this right. It should be there though because we always do one. I do know this patient had some horrible experiences with his prior dentist.

TRIAL

Prepare, Prepare, Prepare!

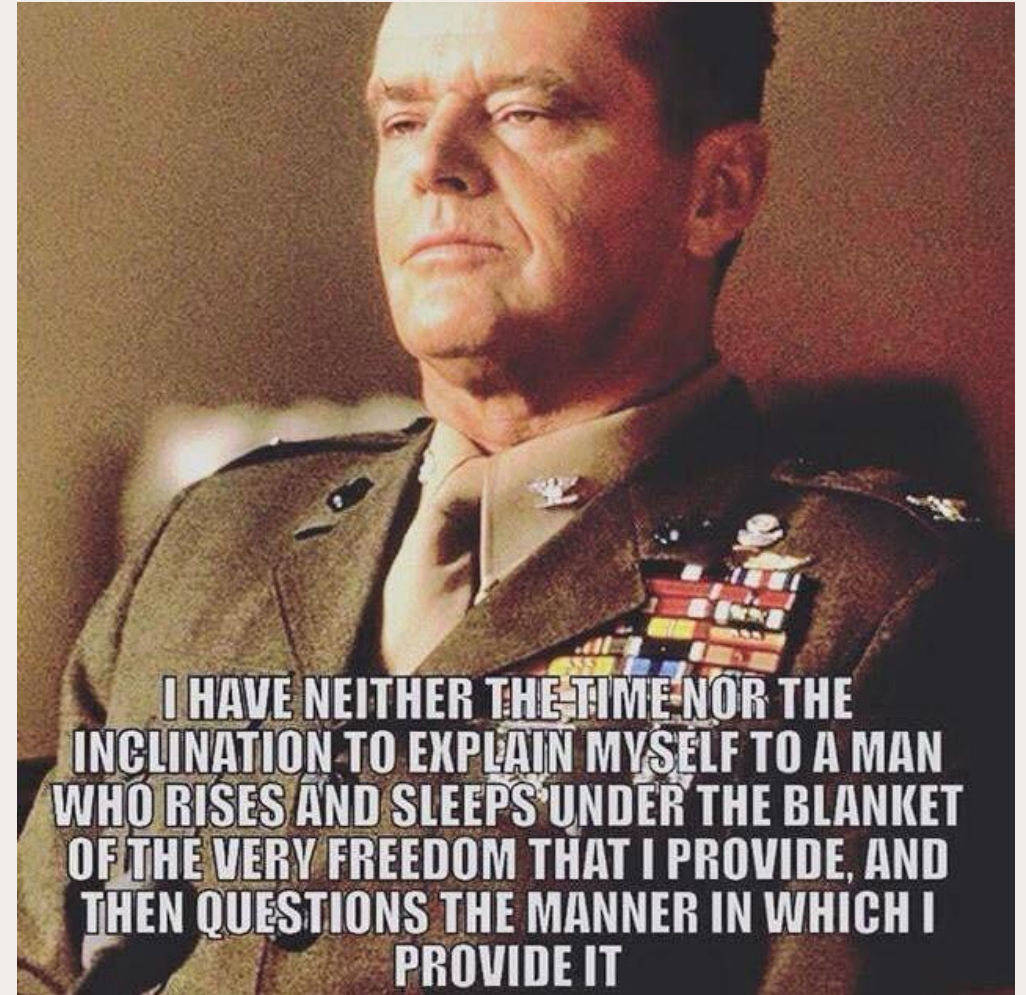
- Credibility risks
- Know chart backwards and forwards

Defusing Reptile Tactics through your testimony

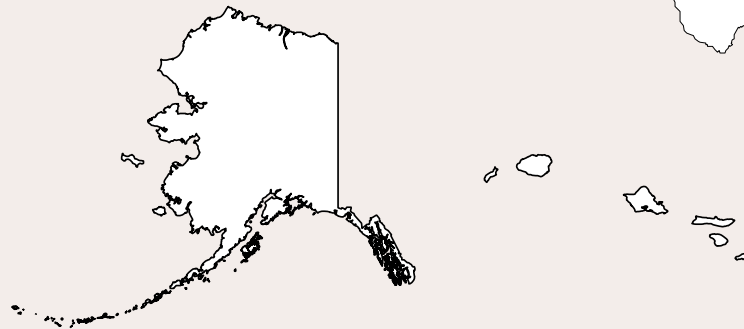
- Venting vs. winning
- Accept and defend actions
- No cognitive breakdowns
- Validate emotions
- Safety vs. profit

Courtroom Presence

- Know your venue
- Attentive and pleasant
- Support other defendants



WHAT CAN WE DO?



5

Comprehensive Tort Reform

10

Material Tort Reform legislation passed



Tort Reform Pending

EXAMPLES OF REFORMS

Comprehensive

Florida (2023)
Montana (2023)
Georgia (2025)
Louisiana (2024/2025)
Oklahoma (2025)
Kentucky (2026)*

Noneconomic Limits

Iowa (2023)
New Mexico (2026)

Third-Party Financing

Indiana (2024)
Louisiana (2024)
West Virginia (2024)
Georgia (2025)
Oklahoma (2025)
Colorado (2025)
Kansas (2025)
New York (2026)
Missouri (2026)*
Mississippi (2026)*
Michigan (2026)*
Tennessee (2026)*

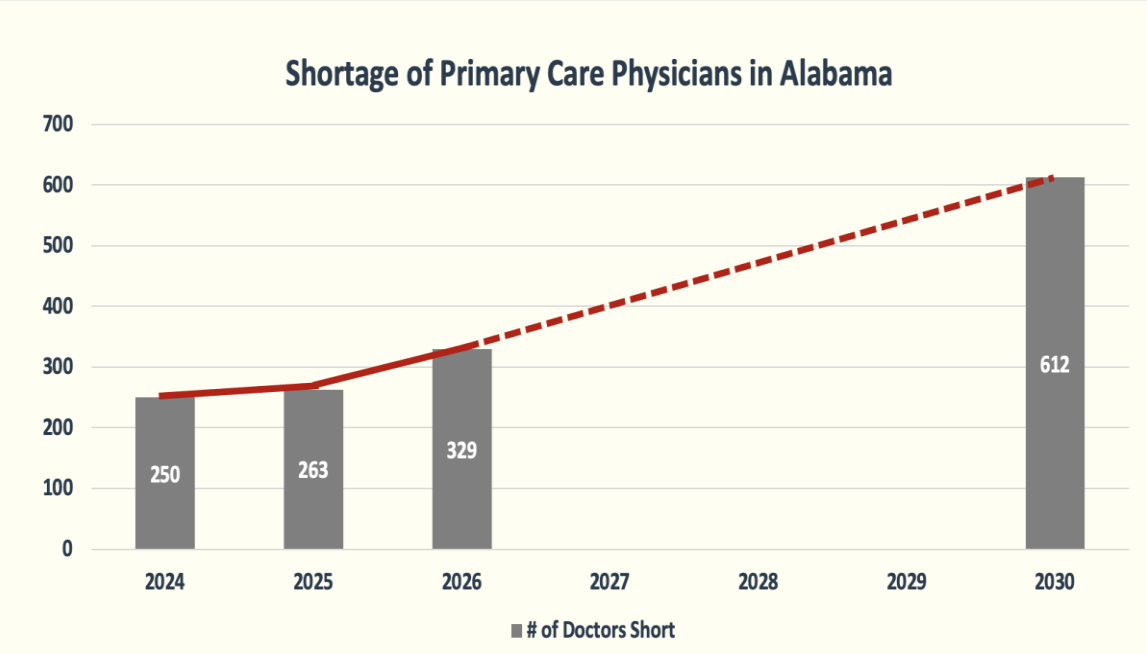
Attorney Advertising

Louisiana (2022)
Kansas (2022)
Florida (2023)
South Carolina (2026)*

Phantom Damages

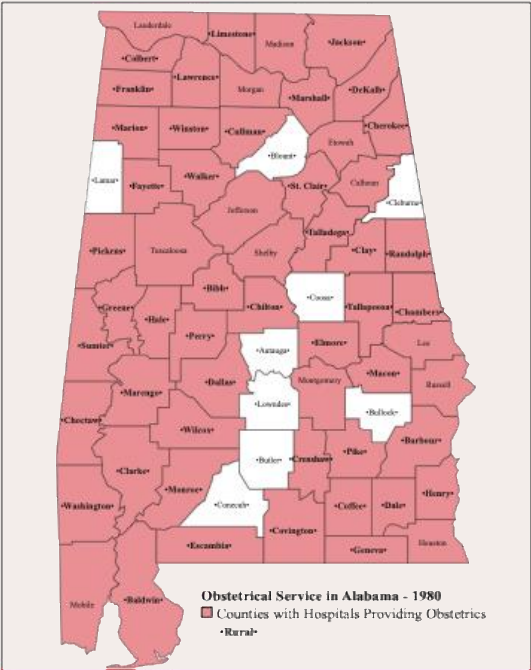
Florida (2023)
Louisiana (2025)
Arkansas (2025)
Georgia (2025)
Oklahoma (2026)*
South Carolina (2026)*

REALITIES OF ALABAMA'S HEALTHCARE SYSTEM

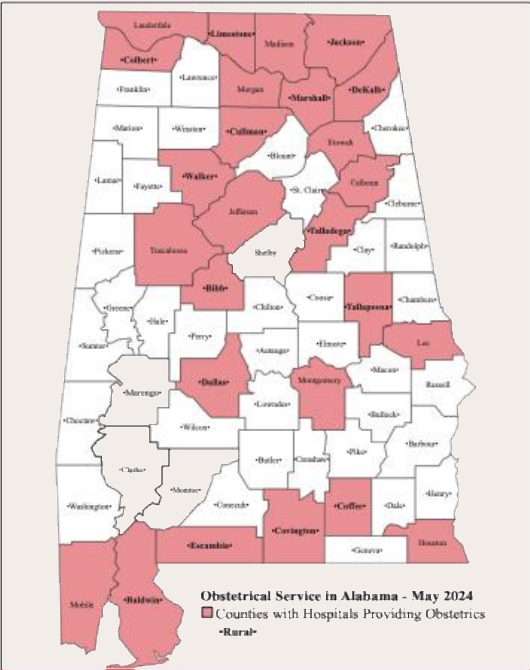


Alabama is 45th in the US, with only 241 primary care doctors per 100,000 people

A PICTURE OF THE LOSS OF RURAL OBSTETRICAL SERVICE IN ALABAMA 1980 TO 2025



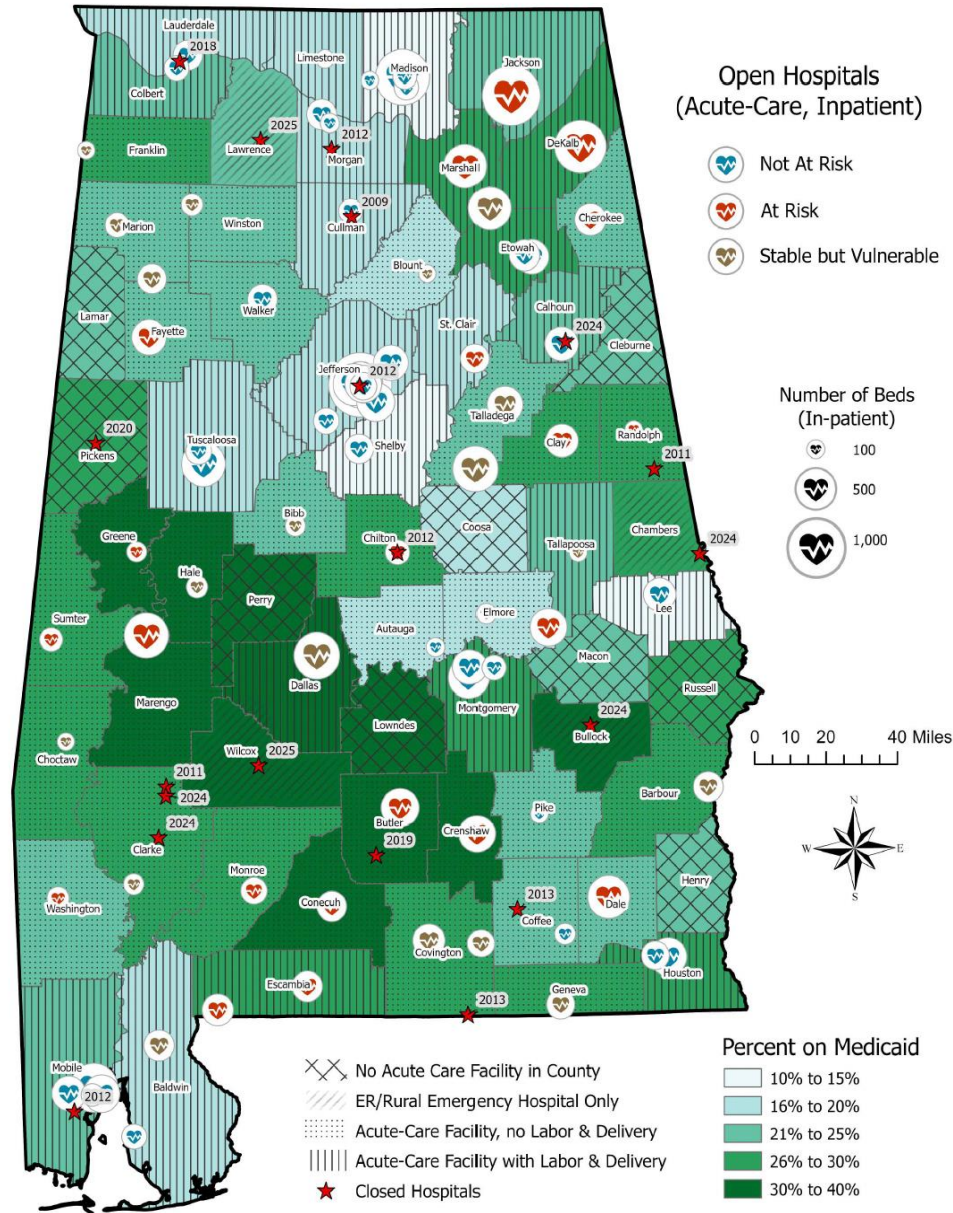
45 of the 55 counties currently considered **RURAL** had hospitals providing obstetrical service in 1980



15 of the 55 counties currently considered **RURAL** had hospitals providing obstetrical service **TODAY**

Produced by the Alabama Department of Public Health, Office of Primary Care and Rural Health, March 17, 2025. The defining of counties as rural or urban is based upon a definition that is used by the Alabama Rural Health Association.

Alabama Counties by Hospital Status, 2025.



19 Hospital Closures

17 Hospitals At-Risk

17 Hospitals Stable But Vulnerable

GIS Analysis of Alabama's At-Risk Hospitals: Considering New Medicaid Changes and Potential Solutions University of Alabama Arkansas Tech University Avani Shah, Ph.D Joseph Swain, Ph.D

PHYSICIAN RECRUITMENT

From 2015-2024, nationwide, 55.7% of physicians chose to stay in the state where they completed residency (retention ranges from 36% in DC to 77% in CA).

At 52.3%, **Alabama is below the national average** and has **the lowest post-residency retention rate** of any contiguous state besides TN, while GA, FL, and even MS are **above** the national average.

Real impact if Alabama had done better at retaining physicians from 2015-2024:

- at the national average = 80 more physicians practicing in Alabama;
- at MS' retention rate = 110 more physicians;
- at GA's retention rate = 118 more physicians; and
- at FL's retention rate = 292 more physicians.

89% of Alabama physicians say a state's liability reputation is a top recruiting consideration.

Thank
you

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