

Further Examine the Malpractice Plague

According to the AMA, the malpractice crisis is so serious that many OB/GYN physicians can't afford—or can't find—malpractice insurance. Statehouses throughout the United States are hosting debates on how America got into this situation and what it will take to fix it. Is it greed among insurers? Are unrealistic expectations leading to unnecessary lawsuits? It's worth a look behind the numbers to find some answers.

Malpractice Today

If malpractice insurance was the gold mine some claim it to be, then the industry would be growing rather than receding. For over 2 decades, the St. Paul Insurance Company was the market leader. But in 2002, after posting nearly \$1 billion in malpractice claims losses the previous year, it abandoned the market. Over the past few years, several major malpractice insurers have filed for bankruptcy or have been placed in receivership.

Today's market is dominated by physician-owned insurance companies, which were created to fill the void. Naturally, they don't have outside shareholders to whom they must deliver profits. These and other malpractice insurers are expending about \$1.35 in claims and expenses for every premium dollar they collect. No company can sustain losses of this magnitude and remain solvent, so rates have been raised sharply.

Because state laws vary, so do rates. The greatest increases, which have been as high as 100% in some states, were seen in states where physicians face unlimited liability and

plaintiffs have more incentive to gamble on cases of dubious merit. Meanwhile, doctors in California, Colorado, and Indiana, where insurance rates are a fraction of the cost of rates in nonreform states, have seen average increases of just 5% to 10%.

California Dreams

California's malpractice reform dates back to 1975. Medical liability claims had been fairly uncommon until the early 1970s. Between 1968 and 1974, the number of claims doubled, as lawyers discovered that malpractice claims could be a lucrative source of new business. As losses mounted to \$1.80 for each premium dollar collected, commercial insurers refused to provide coverage at any price and a crisis of availability ensued.

California's law, the Medical Injury Compensation Reform Act, contains the following four principal elements to help remedy the situation:

- A \$250,000 cap on pain and suffering damages
- A periodic payment provision
- A collateral source rule that discourages duplicate payments from different sources
- A sliding scale for attorney fees

As a result, California's physicians pay at least one third less than their counterparts in high-risk states. In addition, when measured in constant dollars, the cost of malpractice insurance has fallen by 30% since 1976. *Non-success story:* Oregon capped noneconomic damages in 1987, but the state supreme court nullified the law in 1998. Over the next 2

years, the cost of claims increased by 400%, which forced premiums to follow suit.

Curable Epidemic

Physicians in high-risk practices have faced the highest premium increases. Half of America's neurosurgeons report a claim every year, and more than 30% of OB/GYN physicians, orthopedists, trauma surgeons, and other specialists are sued annually. And while three quarters of these claims are found to be without merit, it costs insurers an average of about \$23,000 to defend each claim, which has to be calculated into rates. Of course, malpractice premiums have risen sharply for these doctors because they are more likely to be sued, not because they're more likely to be guilty of medical negligence.

There is plenty of evidence to show that tort reform can keep premiums down, while preserving access to medical care as well as access to courts. This conclusion is supported by the nonpartisan Congressional Budget Office, the General Accounting Office, and the National Association of Insurance Commissioners. Until similar reforms are implemented by state legislatures or Congress, claims costs will continue to increase, billions of dollars will be wasted, and more states will experience a full-scale malpractice litigation crisis. —



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