



**Northwestern University School of Law  
The Effectiveness of Caps as a Legal  
Reform**

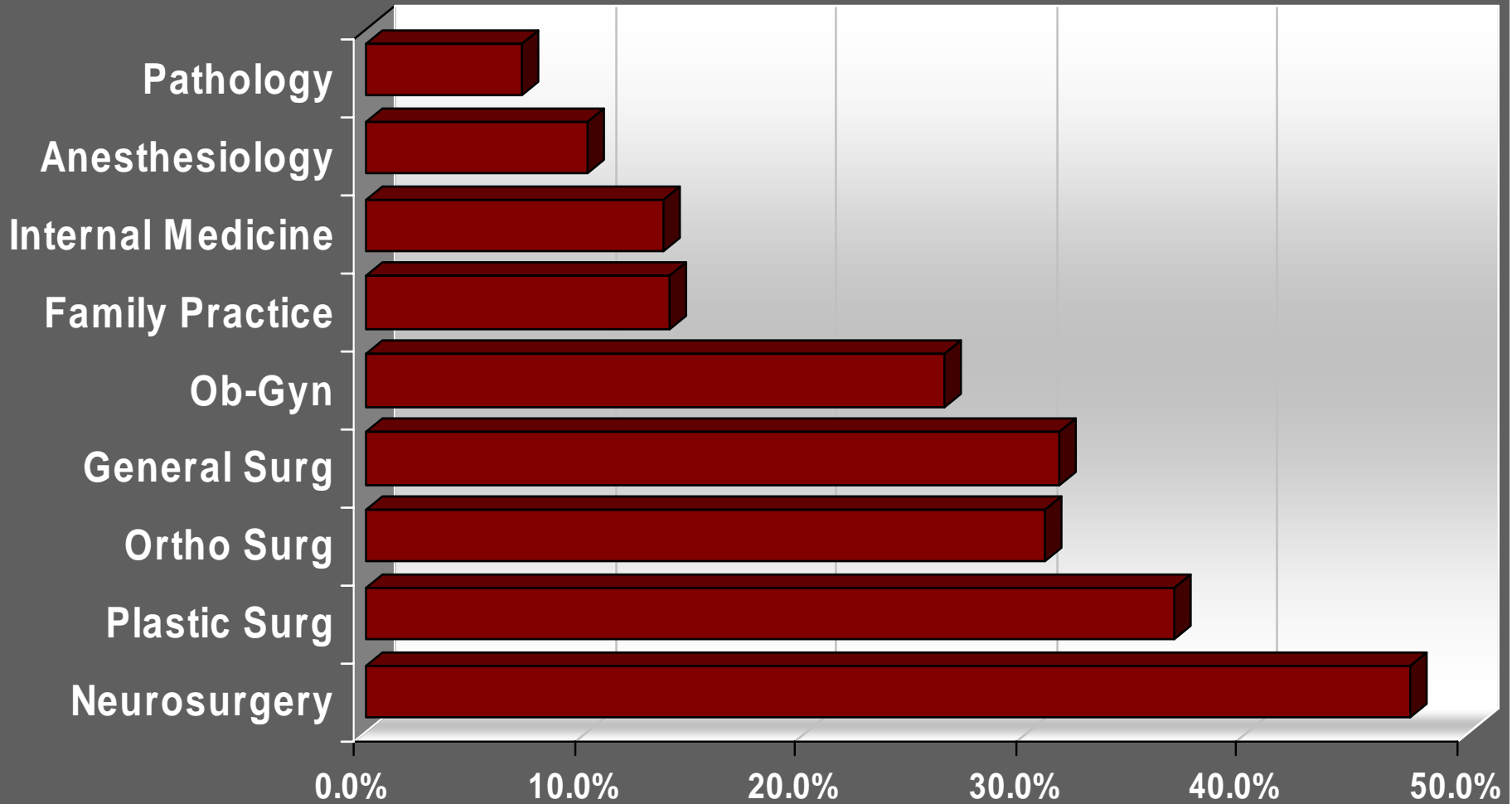
*Richard E. Anderson, M.D., FACP*  
March 30, 2007

# How Serious is the Problem?



- As we sit here today, there are more than **125,000** malpractice claims pending against America's physicians
- Next week there will be 700 more
- The **vast majority** (>75%) of malpractice claims are found to be **without merit**
- More than **50%** of all premium dollars goes to **attorneys** rather than to injured patients
- Malpractice premiums place an unfair burden on physicians

# Frequency by Specialty 1996 - 2005

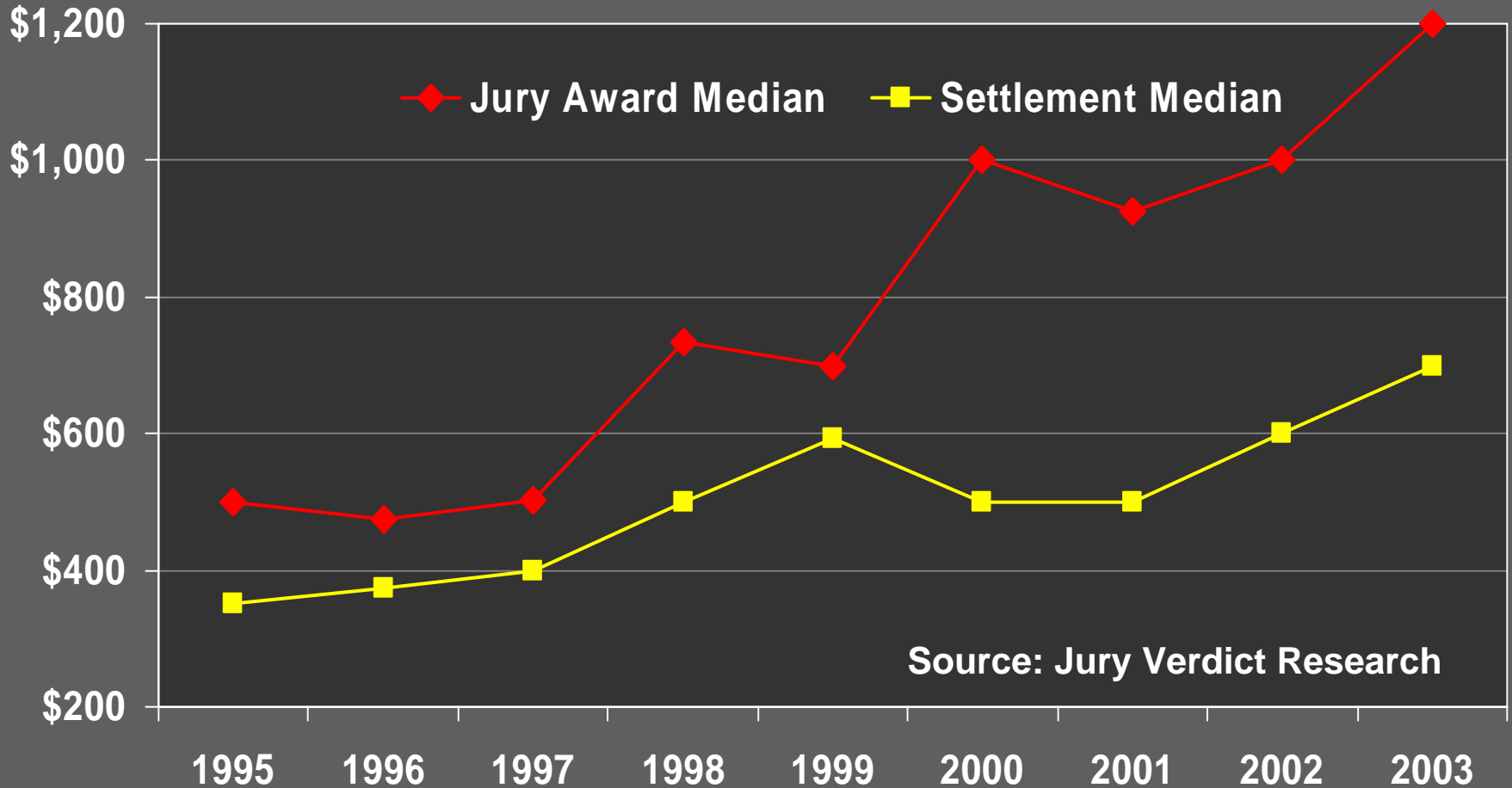


# Severity: National Medians



## National Jury Award and Settlement Medians for Medical Malpractice Cases

(000's)

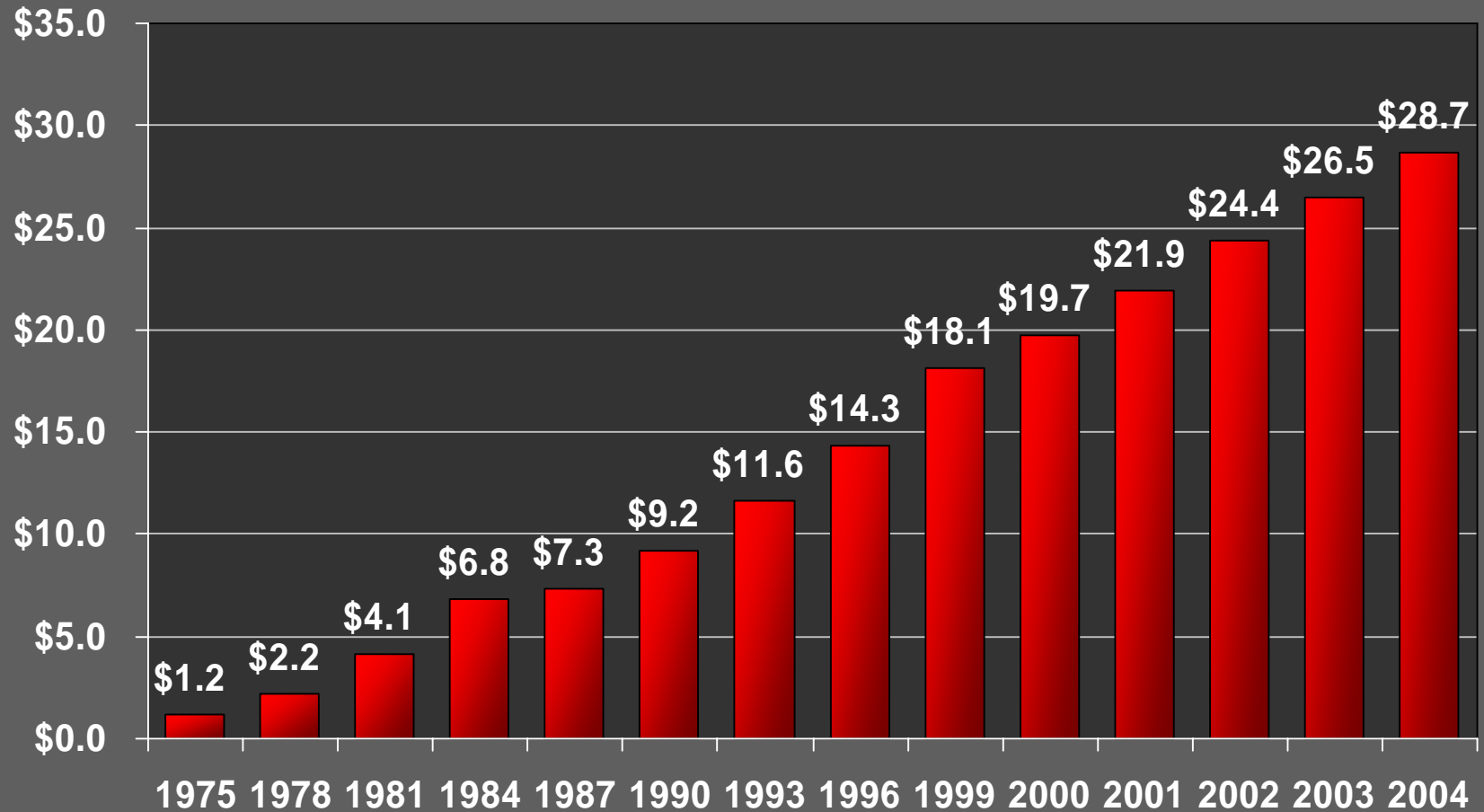


Source: Jury Verdict Research

# Medical Malpractice: Tort Cost Growth is Skyrocketing



\$ Billions

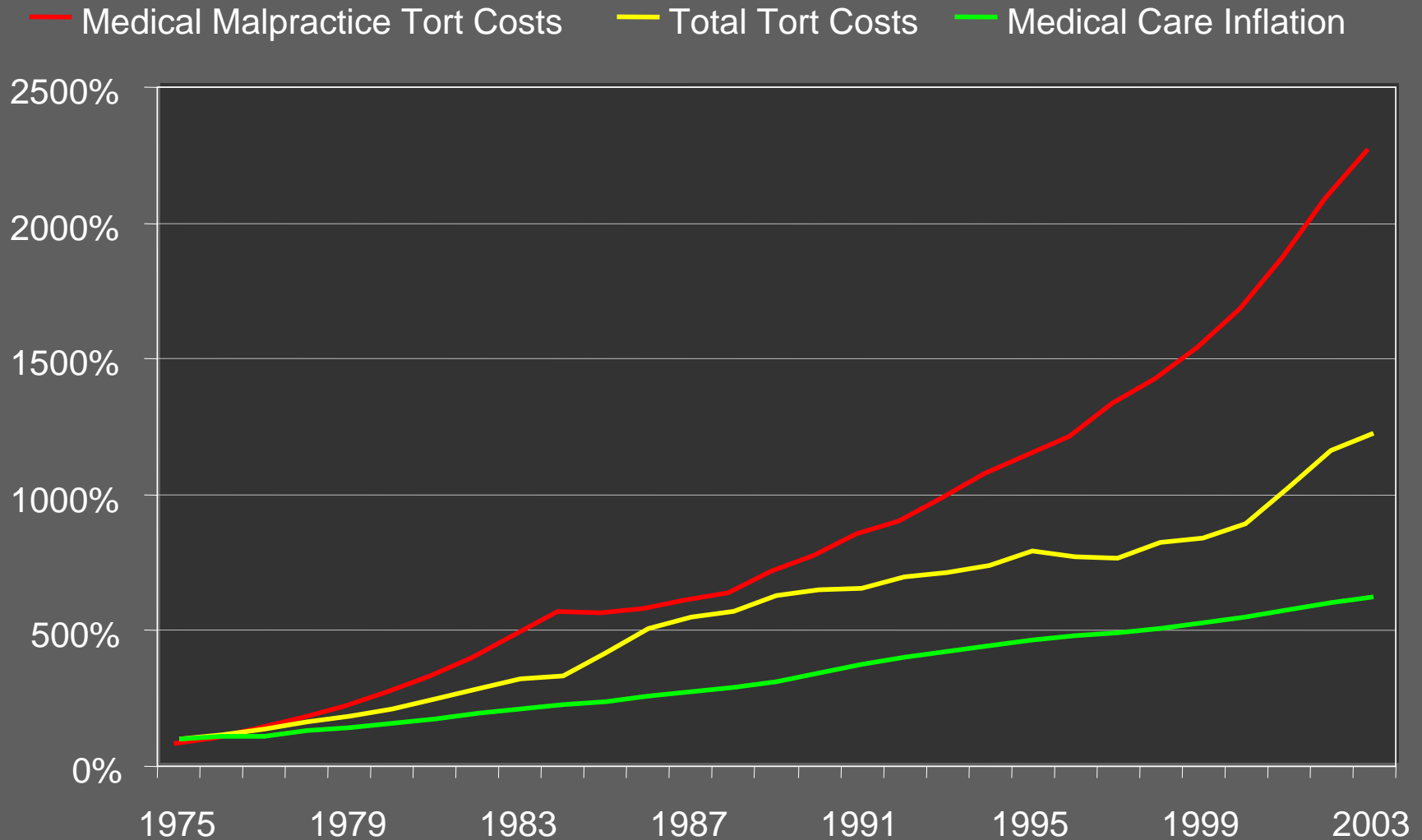


# Why Reform the System?

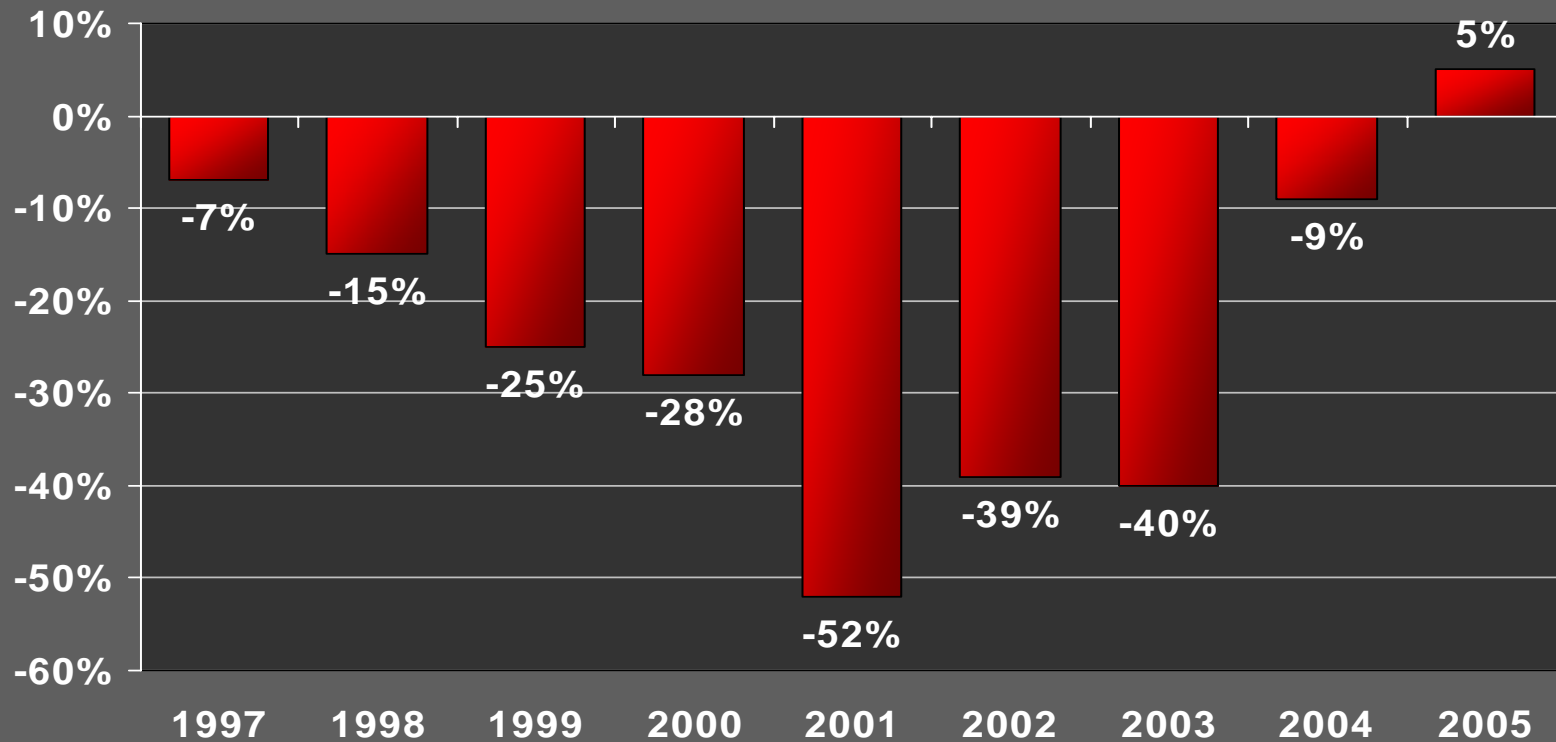


- Contain health care costs
- Increase access to care
- Reduce defensive medicine
- Protect an essential service
- Bring balance to a system that has been seriously damaged

# Med Mal Tort Costs vs. Other Tort Costs and Medical-Care Inflation



# Industry Aggregate Medical Malpractice Net Underwriting Profit Ratios

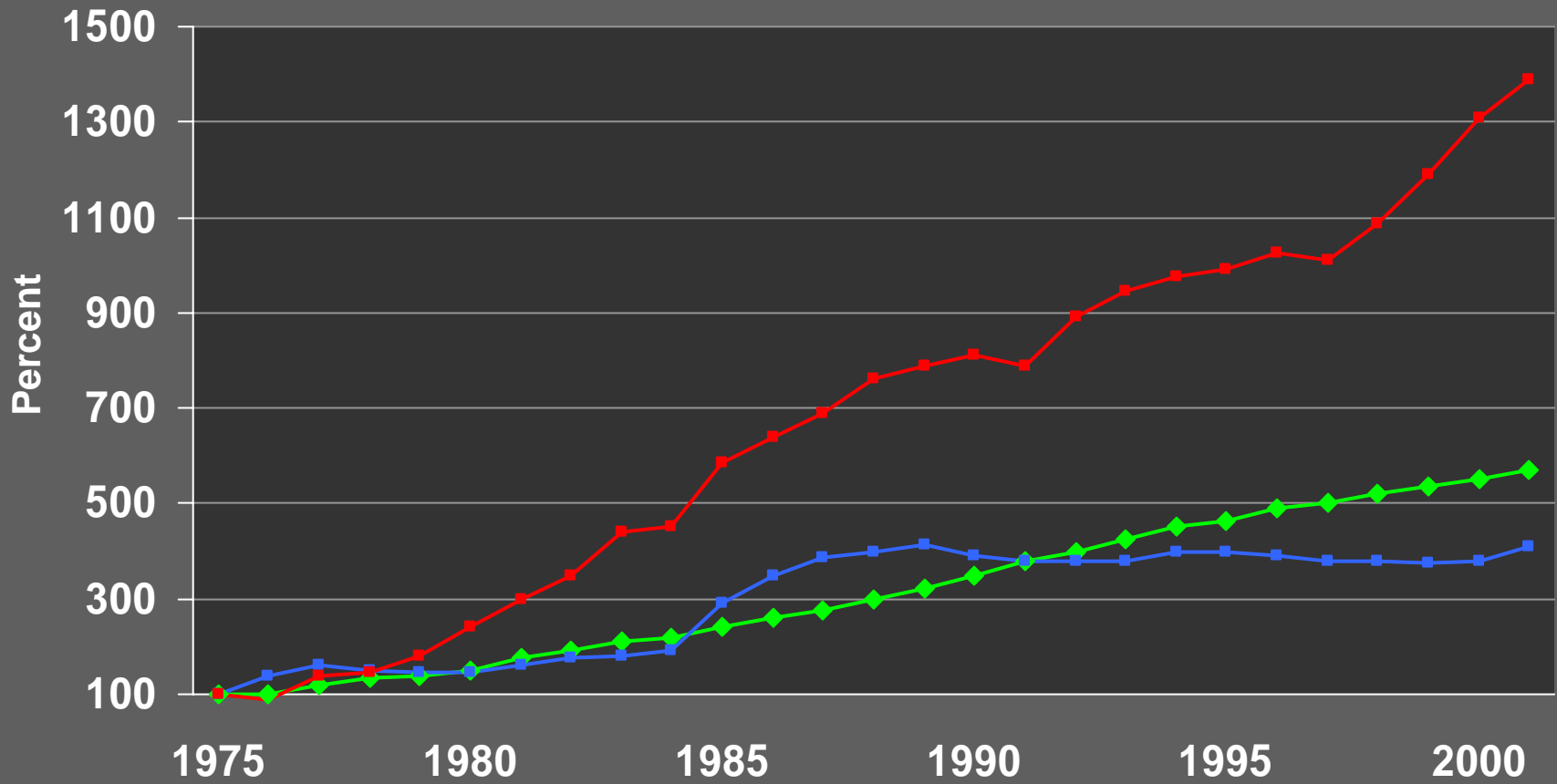


Source: Insurance Expense Exhibit from Highline Data Services

# Inflation and Per Doctor Premiums and Losses



◆ Consumer Price Index    ■ Premium/Doctor    ◆ Paid Losses/Doctor



Source: Brown Brothers Harriman

# MICRA: Medical Injury Compensation Reform Act 1975

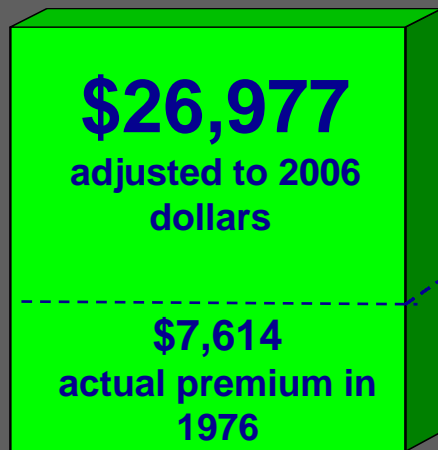


- 1. Mandates a \$250,000 cap on noneconomic damages ONLY  
***This is the same figure that was used for the victims of 9/11***
- 2. Allows introduction into evidence of collateral sources of payment
- 3. Allows periodic payments of future damages
- 4. Provides for a sliding scale limit on attorneys' contingency fees

# MICRA Helps Reduce California Medical Liability Premium Rates by 40%



## The Doctors' Company 1976-2006



Average Premium 1976\*



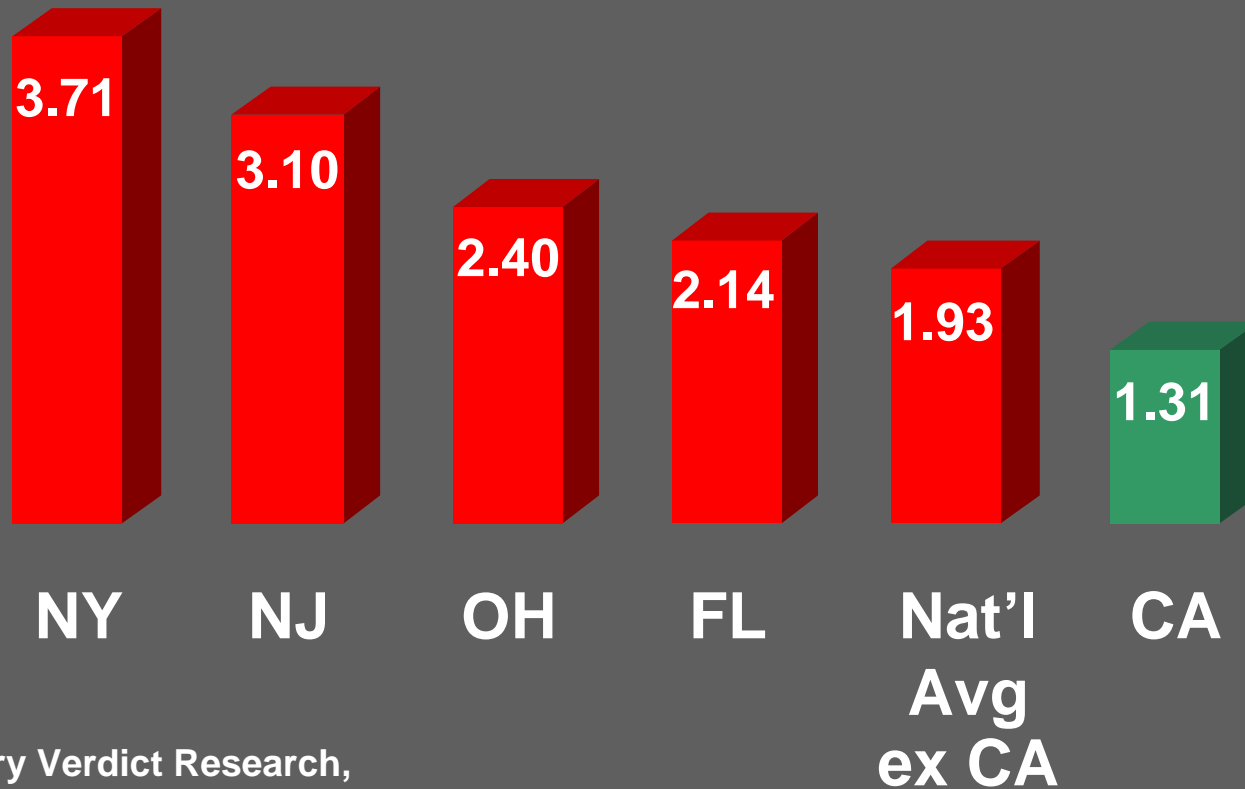
Average Premium 2006

\* \$7,614 average premium adjusted to 2006 dollars based on the Average Consumer Price Index for a \$1 Million/ \$3 Million Claims-Made Policy Premium

# MICRA Reduces Verdict Cost and Frequency



## \$1 Million+ Verdicts Per 1,000 Doctors

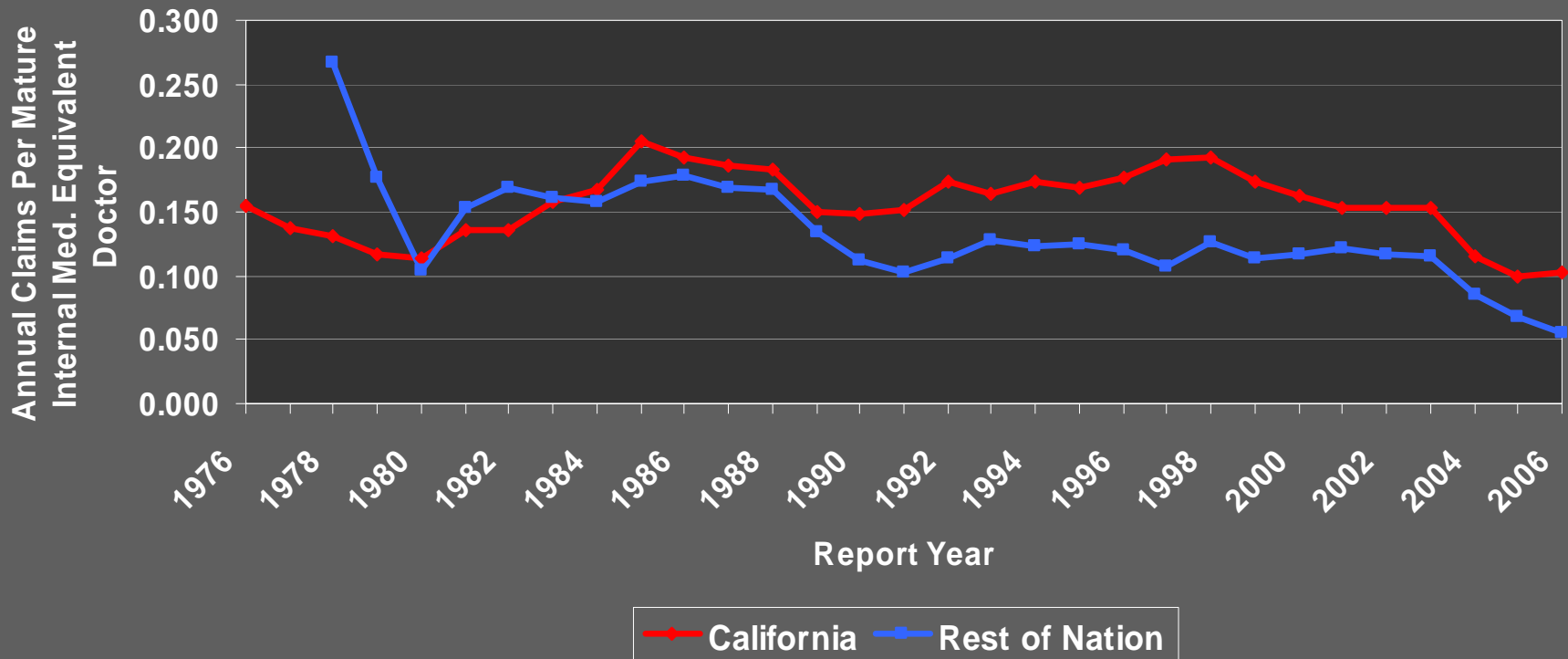


Sources: Jury Verdict Research,  
AMA

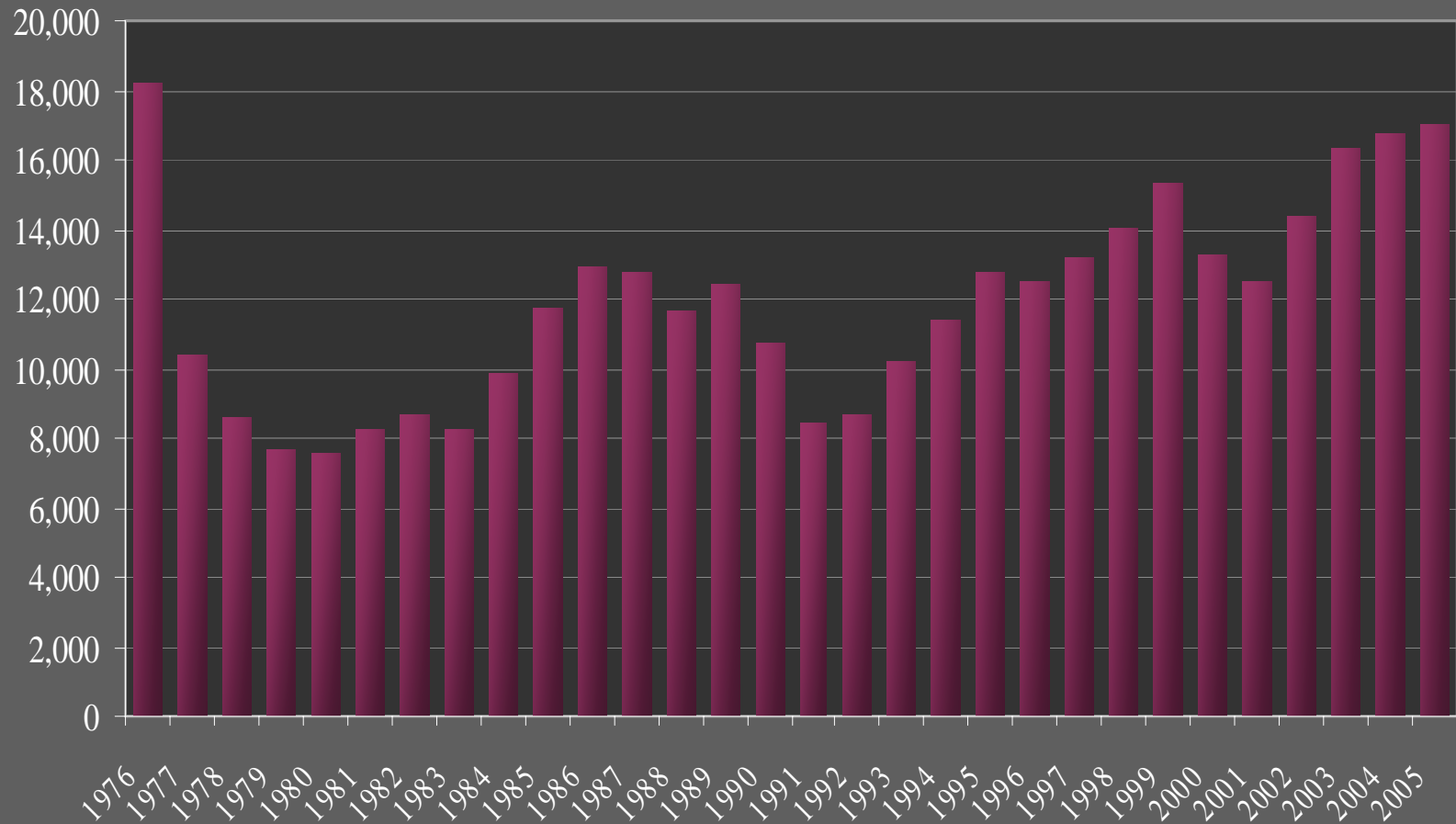
# MICRA Does Not Limit Access to Courts



TDC PHYSICIAN CLAIM FREQUENCY



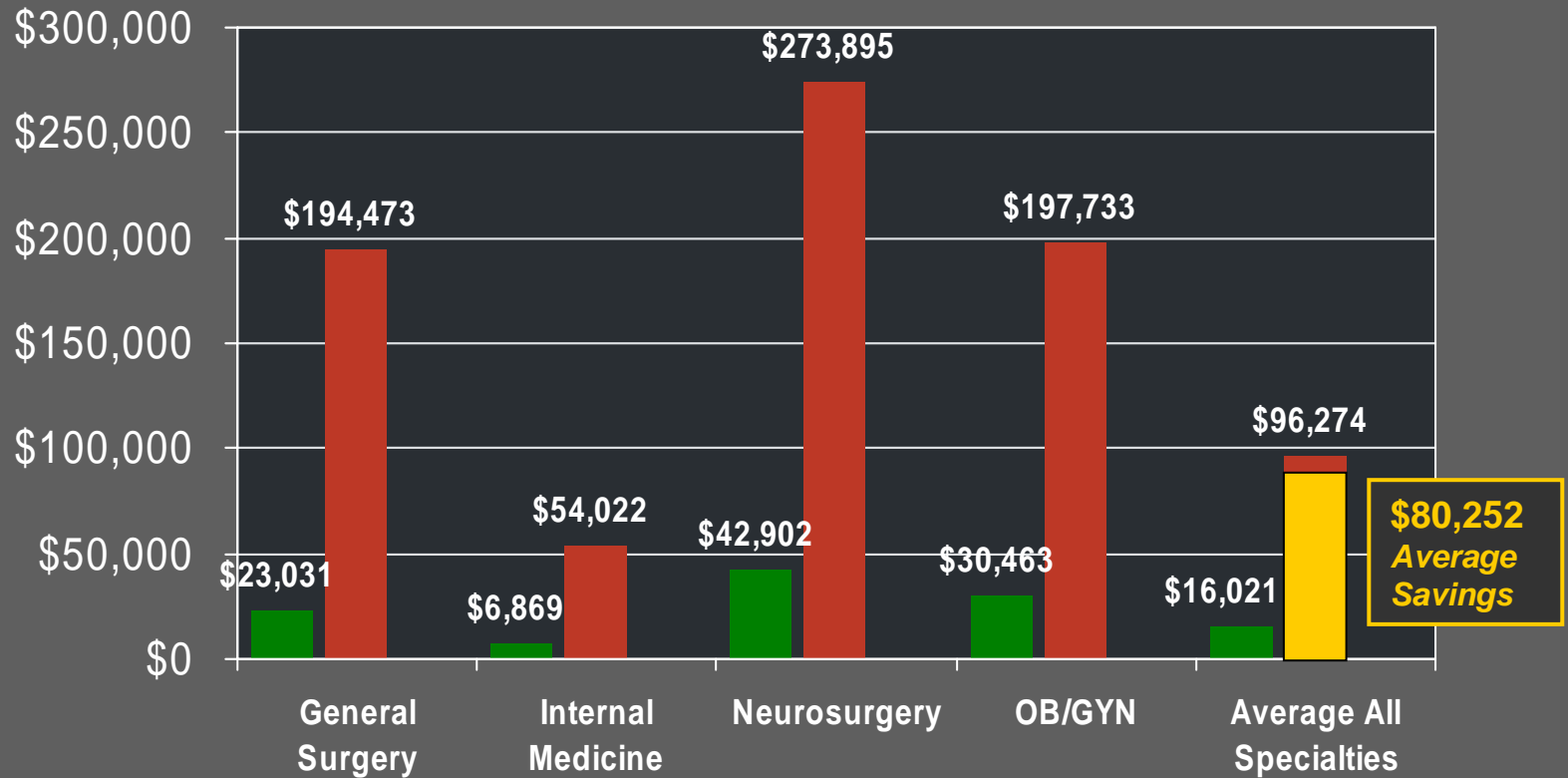
# TDC California Rates Per Doctor



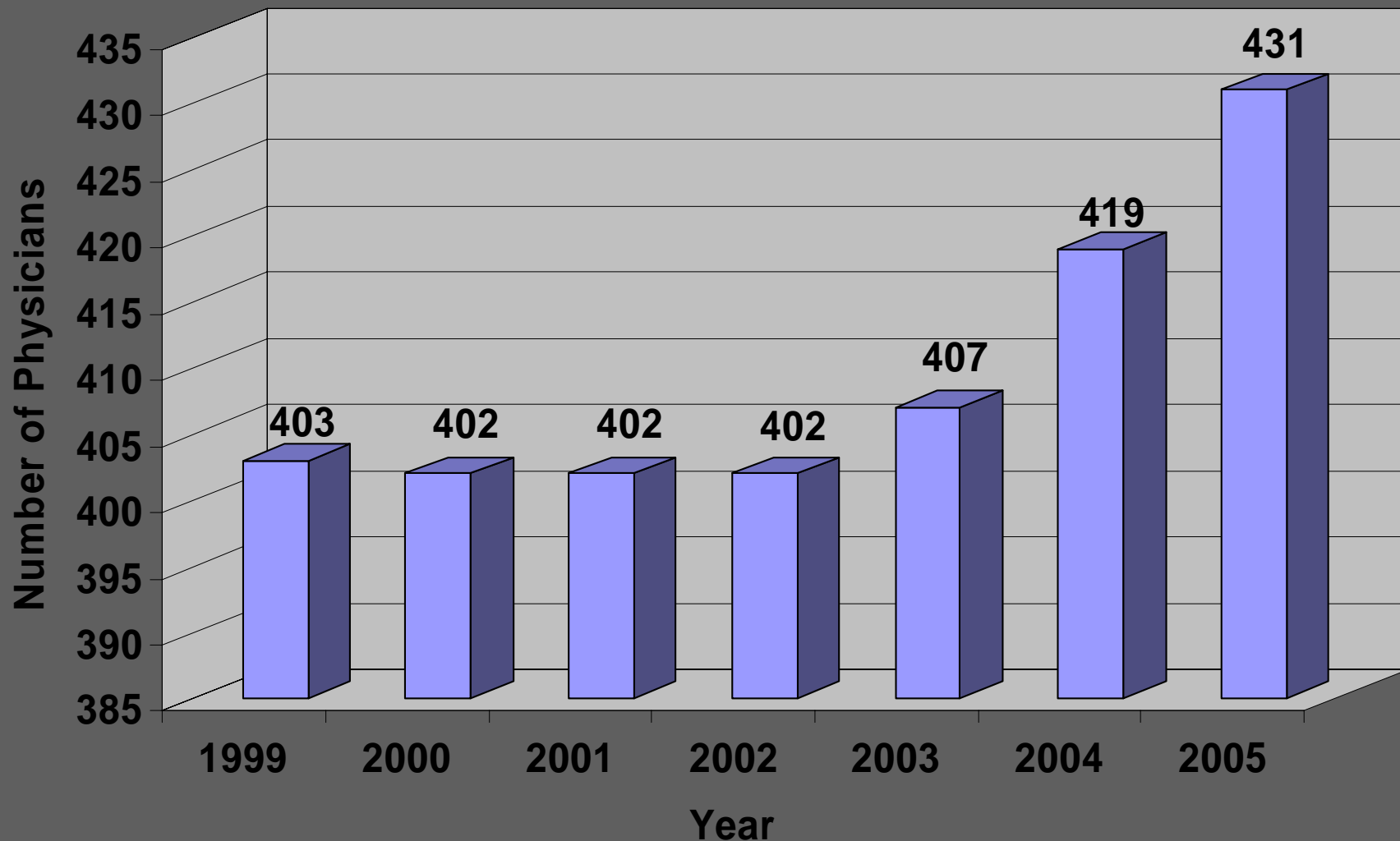
# 2006 MICRA Savings Chart



■ N. CA ■ FL-NY-MI Average ■ MICRA Savings

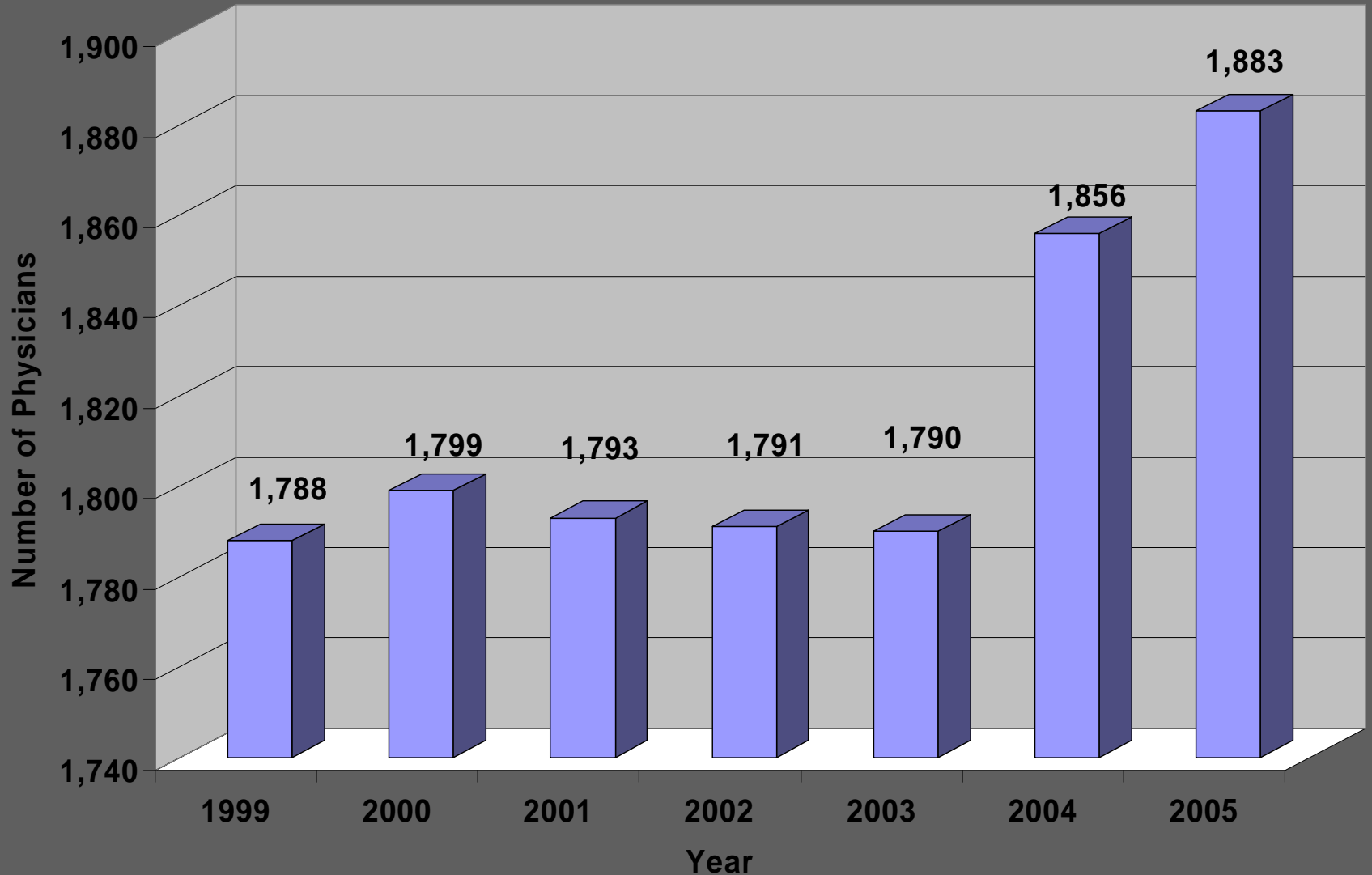


# NEUROSURGEONS IN TEXAS (1999 – 2005)



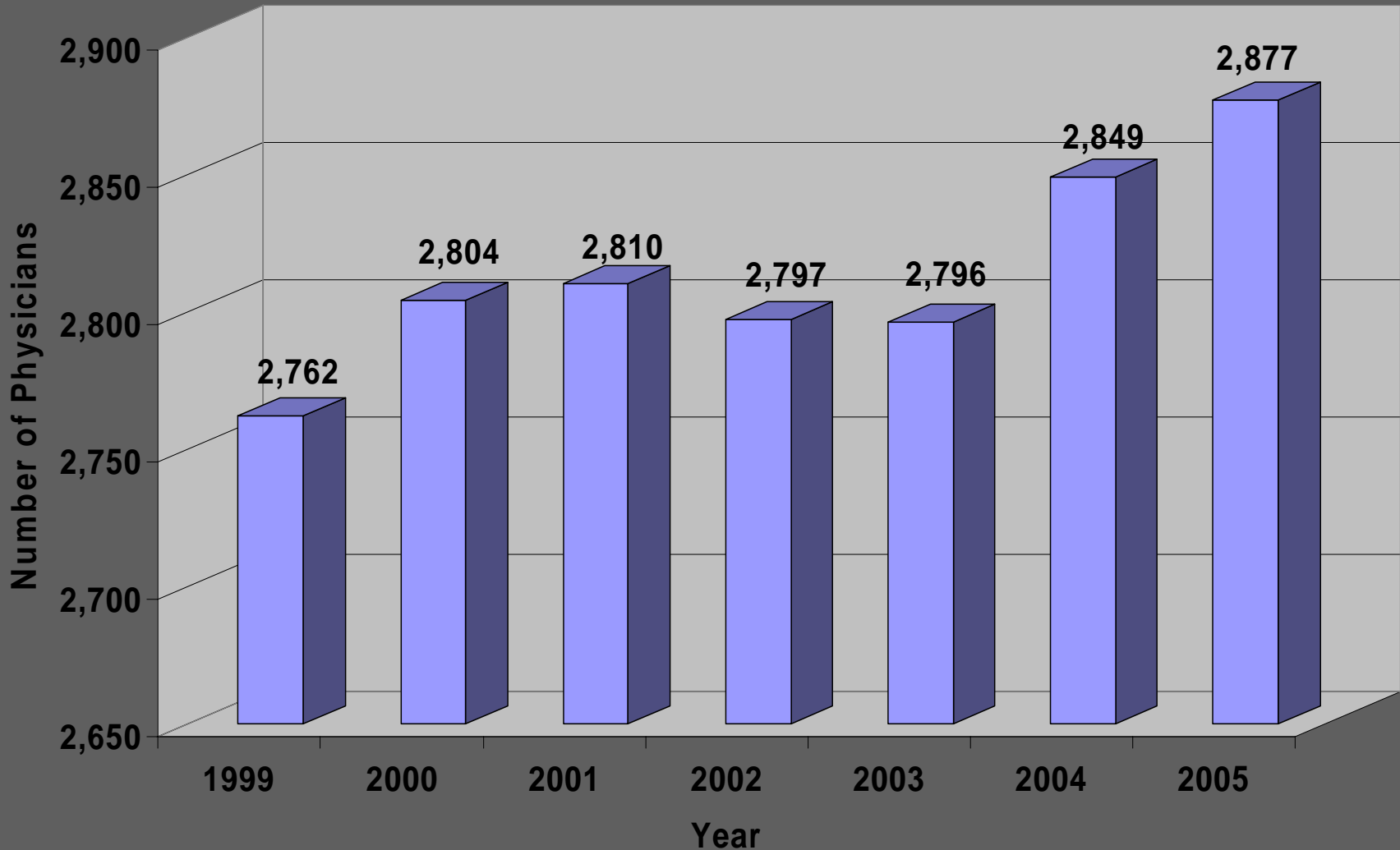
Source: Texas Medical Board – May Reports

# ORTHOPEDIC SURGEONS IN TEXAS (1999 – 2005)



Source: Texas Medical Board – May Reports

# OB/GYN PHYSICIANS IN TEXAS (1999 – 2005)



Source: Texas Medical Board – May Reports

# Texas: Hospital Liability Costs and Caps



2003: 54% rate **hike**

2004: 17% rate ***CUT***



*Source: Texas Hospital Association*

# Average Rate Cut

# 30.00%

• *Source: Texas Department of Insurance*

# Competitive Market Revitalized

- 23 new companies writing physician liability coverage in Texas since February 2003
- 4,400 policies have been written

*Source: Texas Department of Insurance*

# But: Isn't the Tort System Helpful in Improving the Quality of Care?



- After 30 years of legal assault on the medical profession, what have we to show for it?
- Would we tolerate a policeman who made false arrests 75% of the time? How about a prosecutor who indicted the innocent 75% of the time?

# Documentation and For More Information...



- ***Medical Malpractice: A Sourcebook for Physicians***, Humana Press, 2004
  - *The Case for Legal Reform*, Chapter 15, *Medical Malpractice: A Sourcebook for Physicians*
- ***Effective Legal Reform and the Malpractice Insurance Crisis***, *Yale Journal of Health Policy, Law and Ethics*, Volume V, Issue 1, Winter 2005
- ***Defending the Practice of Medicine***, *Archives of Internal Medicine*, Vol. 164, June 14, 2004
- ***Billions for Defense***, *Archives of Internal Medicine*, Vol. 159, Nov. 8, 1999

**The articles listed above are available at:  
[www.thedoctors.com/anderson](http://www.thedoctors.com/anderson)**

# Documentation and For More Information...



- *Marcia Boumil, Medical Liability in a Nutshell, 2<sup>nd</sup> Ed., West Legal Studies*
- *S.Y. Tan, Medical Malpractice, World Scientific, 2006*