



**Medical Malpractice Insurance and
Liability Reform:
Perspective of a Physician/CEO**

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- The medical malpractice insurance crisis is serious, and real
- Negative impact on clinical practice
- Liability reform is necessary and effective
- The patient safety movement is important, and must be understood in appropriate context
- Ohio / California

Why Reform the System?



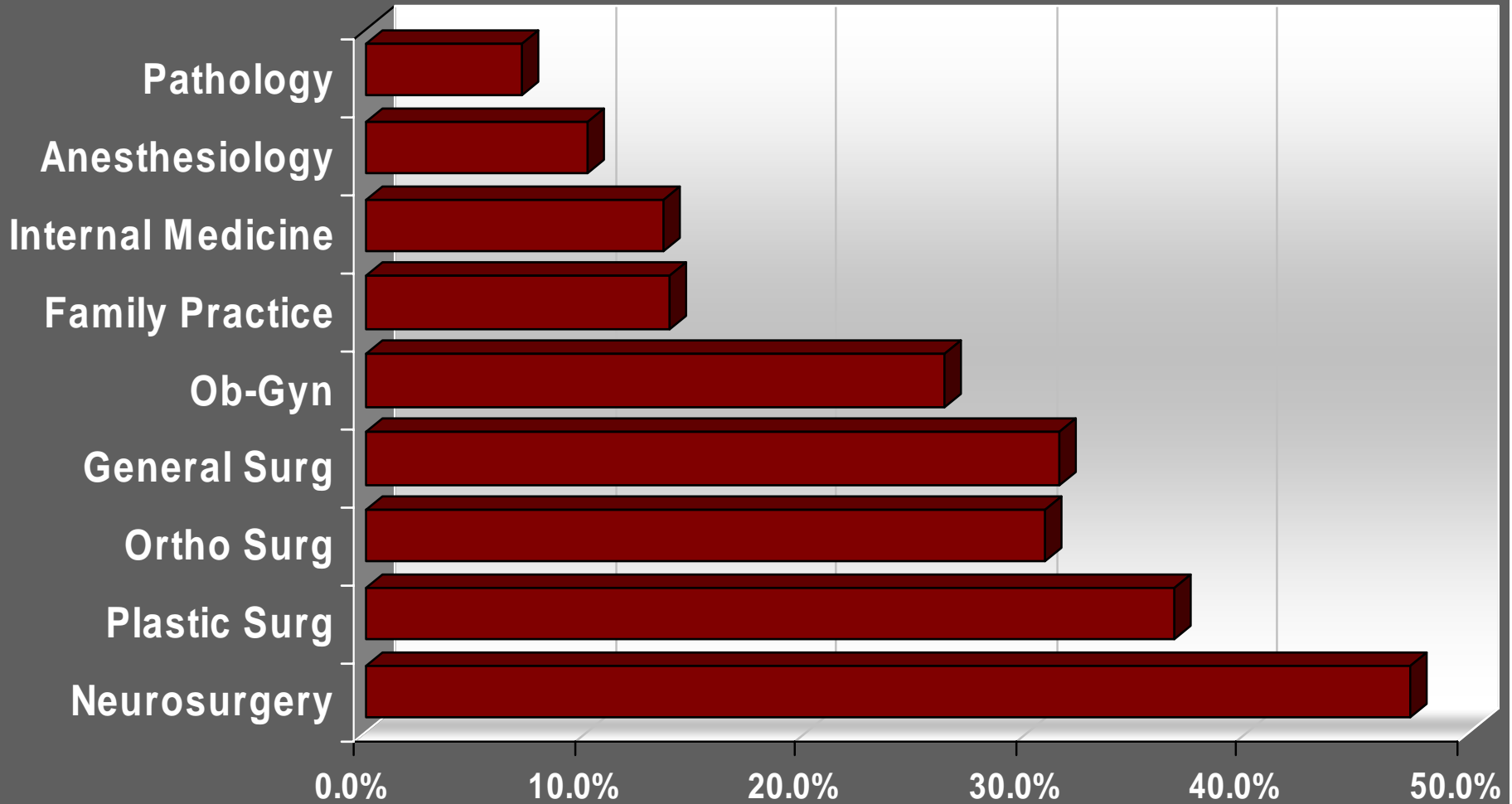
- Contain health care costs
- Increase access to care
- Reduce defensive medicine
- Protect an essential service
- Bring balance to a system that has been seriously damaged

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

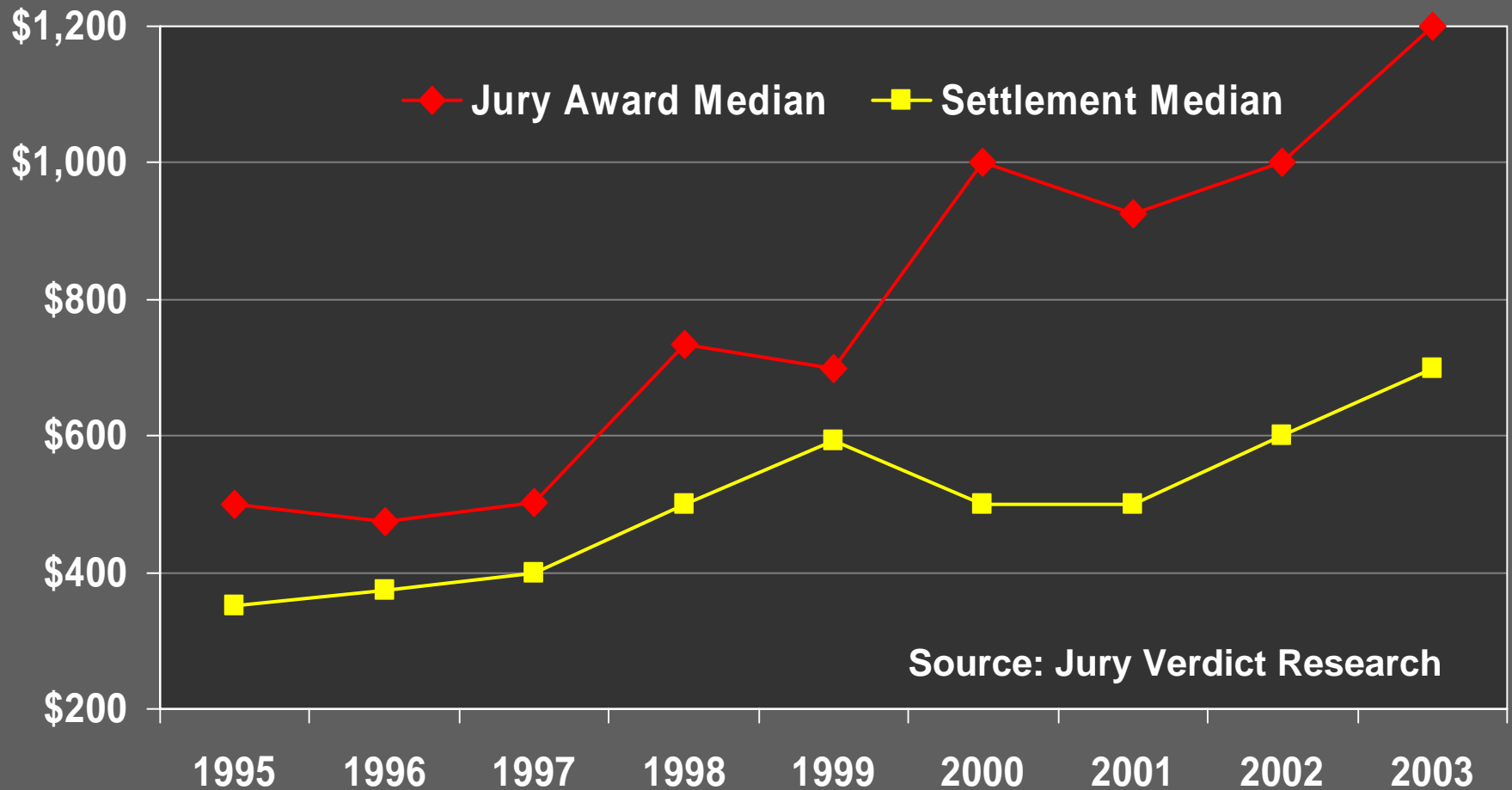


Severity: National Medians



National Jury Award and Settlement Medians for Medical Malpractice Cases

(000's)



Source: Jury Verdict Research

Large Claims Analysis: 5 Years of Data



- Total number of claims : **16,398**
 - 0.8% (140) paid *\$1 million* or more,
 - =28.5% of paid indemnity
 - **2.3%** (378) paid *\$500,000* or more,
 - =55.4% of paid indemnity

Impact of the Outliers

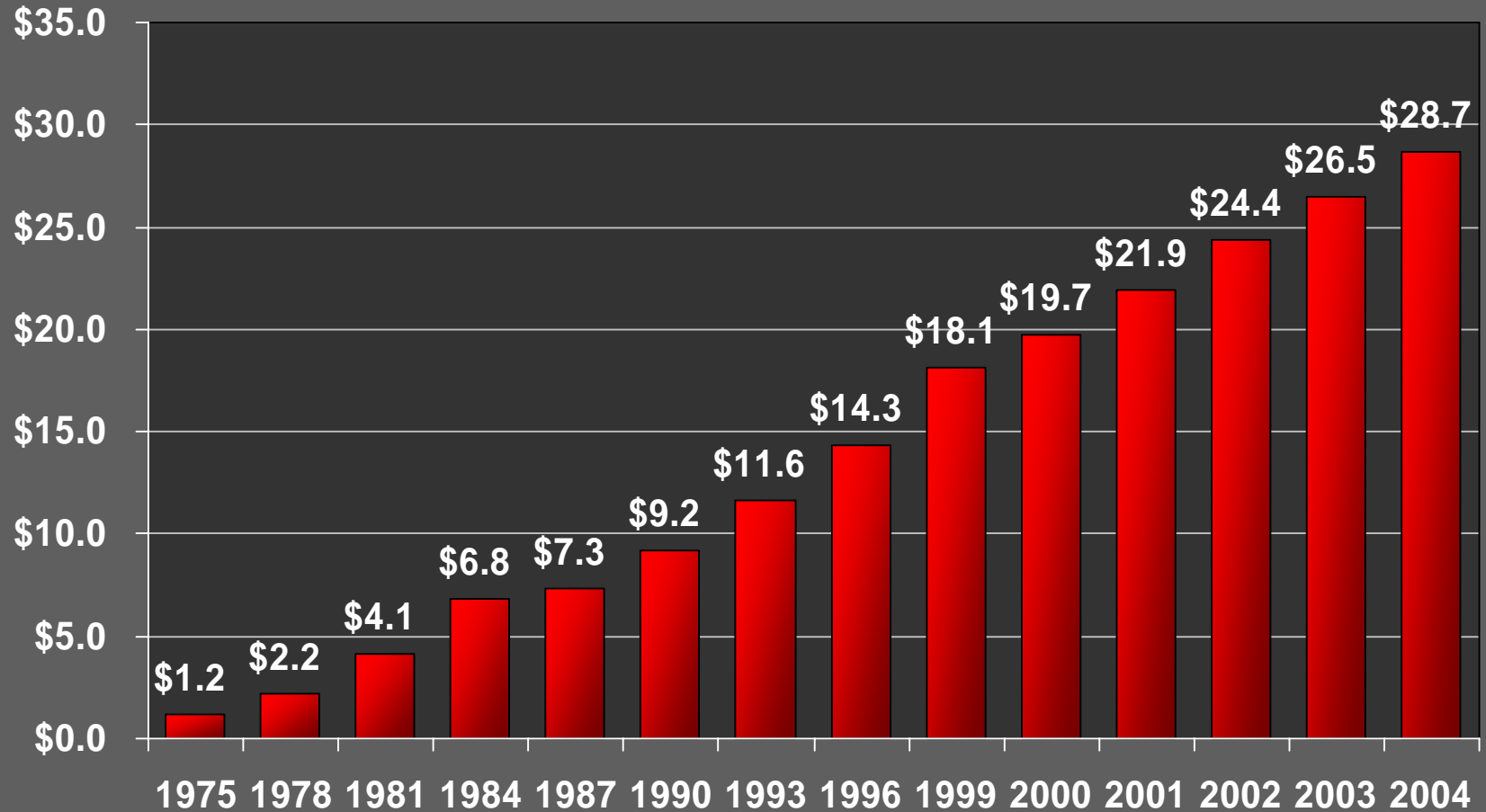


- Fewer than 100 claims per year account for more than *50% of all indemnity* paid on behalf of our 33,000 physicians.

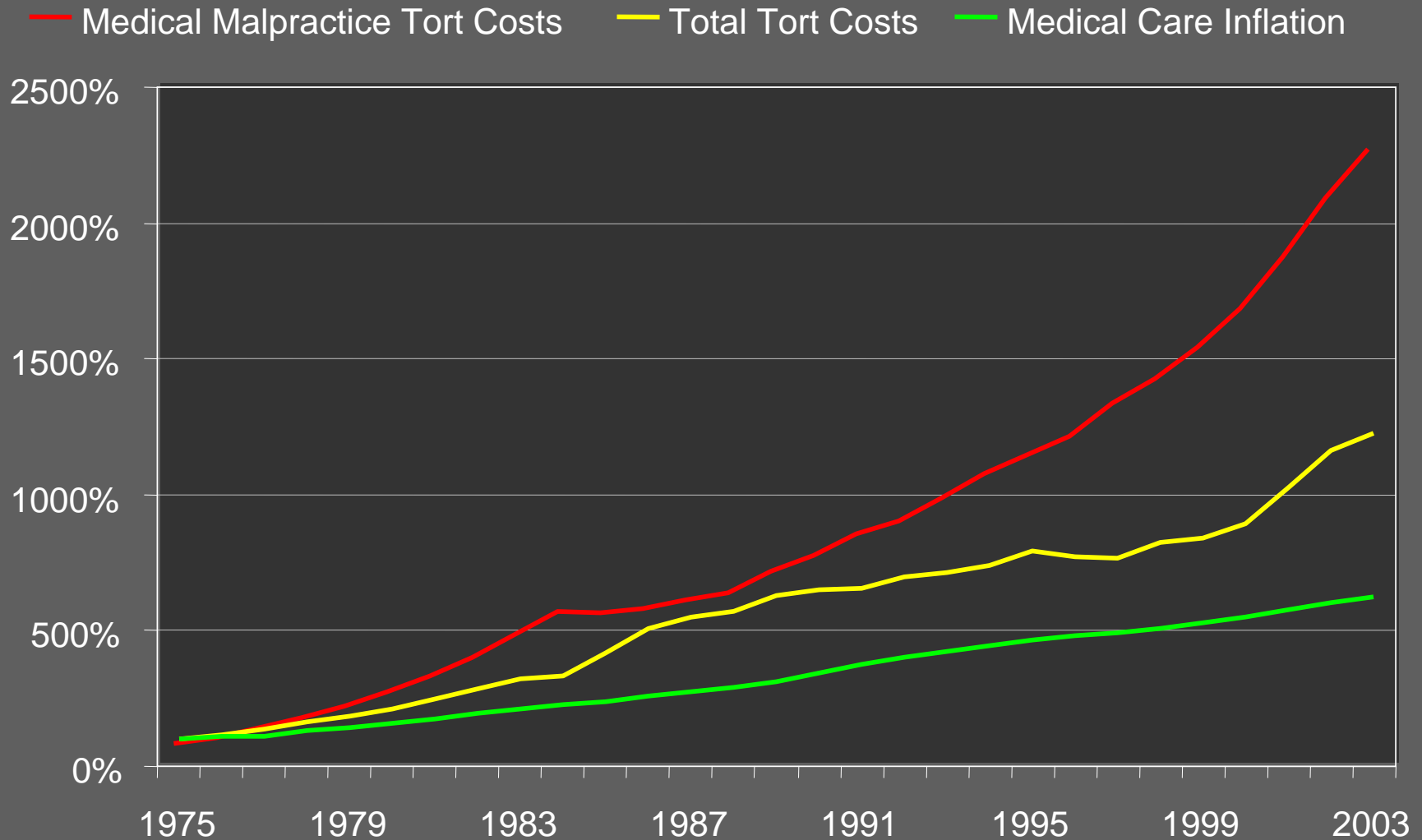
Medical Malpractice: Tort Cost Growth is Skyrocketing



\$ Billions



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



Standard of Care

- Level of care of the reasonably competent doctor
 - Reasonable person standard: i.e., informed consent
 - Locality rule: largely ignored
 - Based on testimony of experts
 - Respectable minority rule
 - Inexperience
 - Not a defense
 - Coincides with single national standard

S.Y. Tan, *Medical Malpractice*, 2006

- Conflict between cost and quality in the healthcare system
 - Should “...recognize(s) limited medical resources and limited insurance coverage along with a tort system that challenges the provider’s professional judgment” Boumil,p.251
 - *Cost is rarely if ever a compelling exculpatory argument*
 - *The de facto standard of care is perfection*

- *“The challenge is evident: any effort at tort reform must consider the changing medical environment and the shared decision making authority that has emerged from changes in the health care delivery system”*

Boumil p. 251

- *Captain of the ship*
- *Respondeat superior*
- *Deep pocket*

Deformed Standards of Care



- Virtually all care in the United States today is defensive
 - Medical standards have been replaced by *medical-legal* standards
 - Physician judgment has been devalued
 - Medical chart documentation more important than the actual care rendered to the patient
- Community standards of care not necessarily the most rational or with best supporting evidence, but rather *the care that keeps physicians out of court*

Anderson p. 217

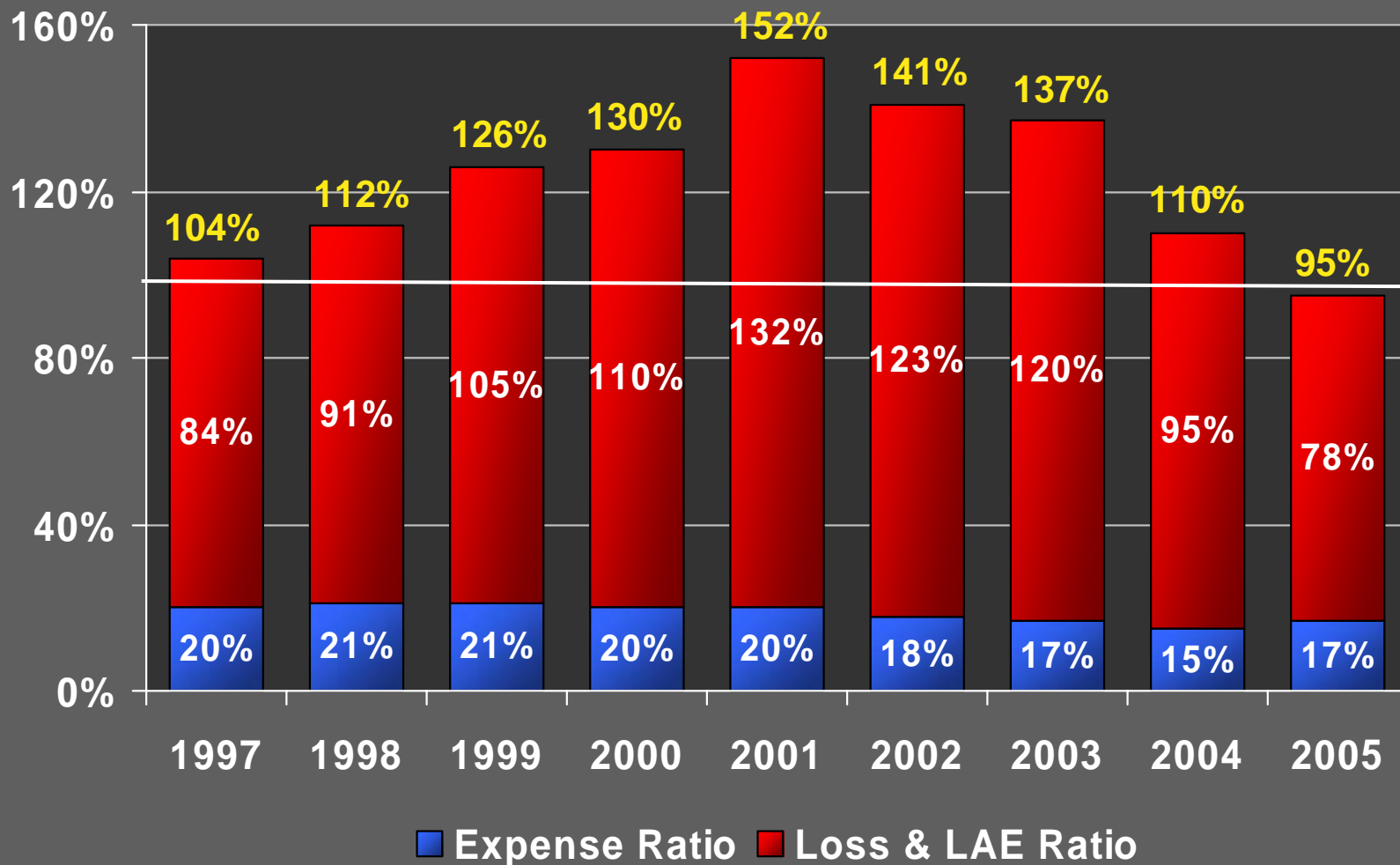
- Excessive litigation forces physicians to regard patients as potential adversaries
- Be wary of the facile argument that some defensive medicine is salutary
 - *By definition, defensive medicine is always wasteful*
- Devalues physician judgment
 - Turns medical practice away from “best for the patient” to ‘*necessary for the doctor*’

What Drives the Cost of Malpractice Insurance?

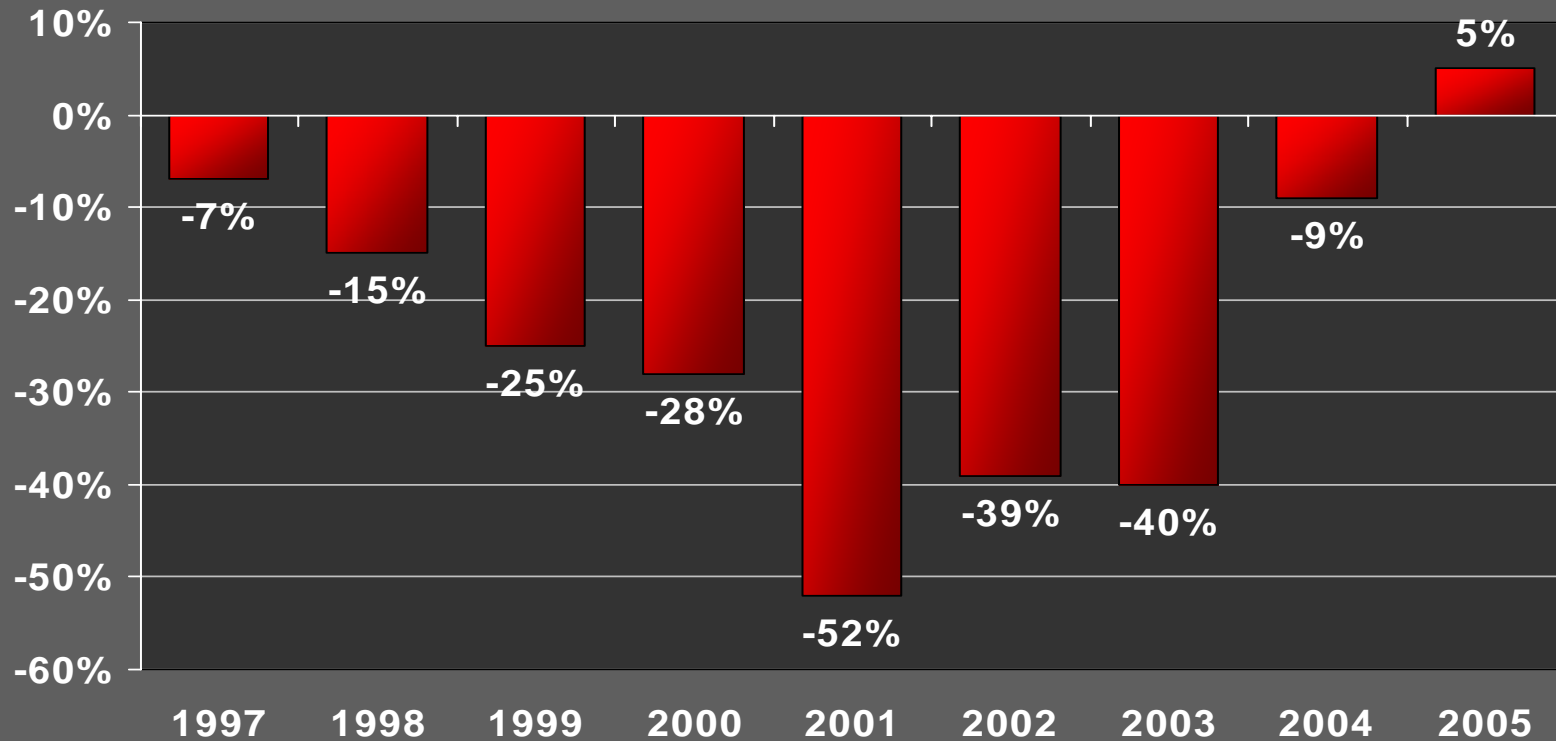
Definition

- Combined Ratio = Loss Ratio +
Expense Ratio

Industry Aggregate Medical Malpractice Net Loss and Expense Ratios



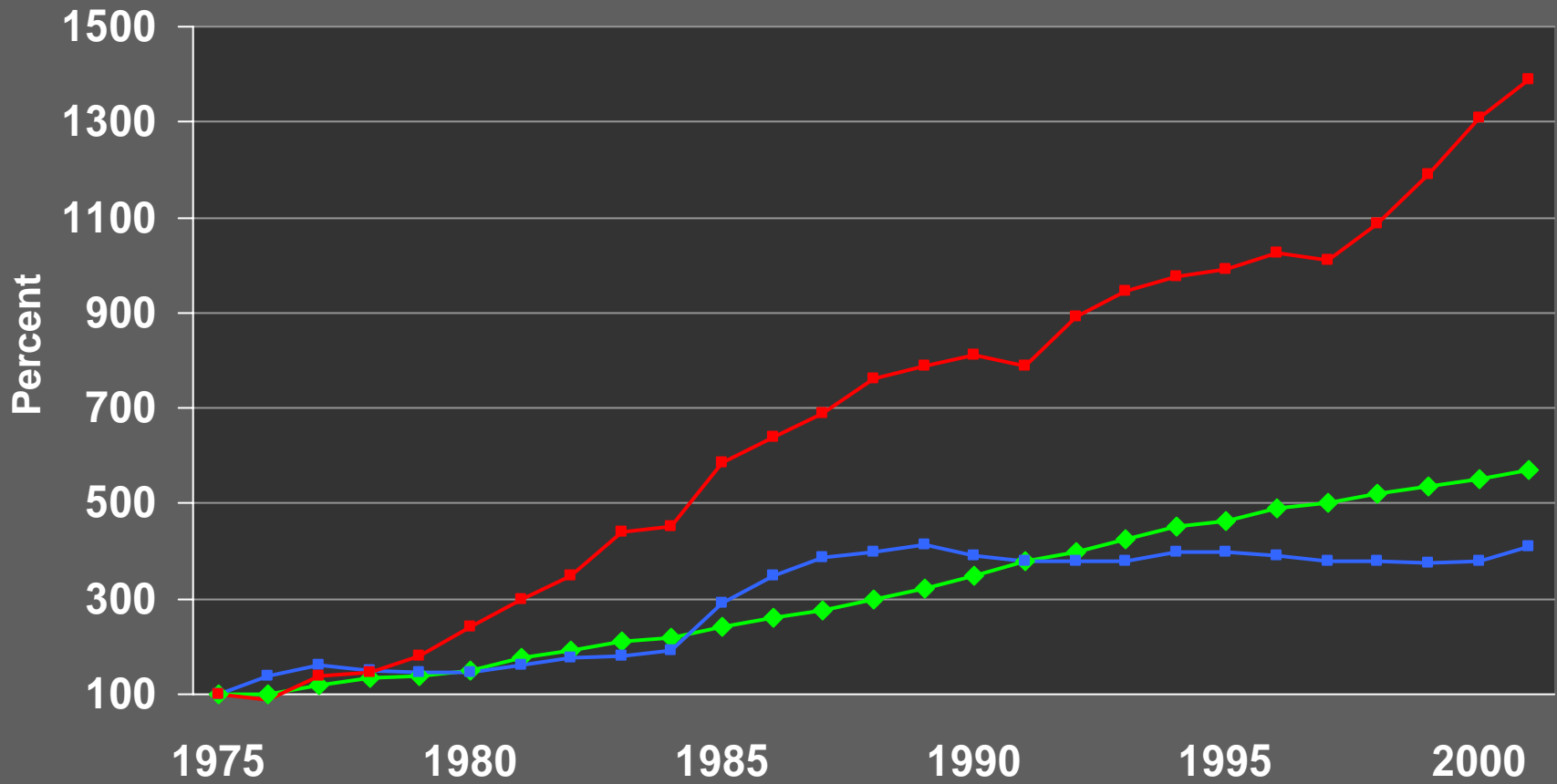
Industry Aggregate Medical Malpractice Net Underwriting Profit Ratios



Inflation and Per Doctor Premiums and Losses



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



Source: Brown Brothers Harriman

Epidemic of Malpractice? Harvard, IOM, and Patient Safety

- The term “patient safety” conveys mixed message to most doctors
- It is important to separate the message from the messenger

Institute of Medicine Study



- 44,000 to 98,000 deaths annually due to malpractice
- Goal: 50% reduction over 5 years

Harvard Study

- NYS 1984
- More than half of cases met screening criteria
- Concordance rate of medical reviewers on existence of an adverse event: 10%
- Failed to replicate their own data
 - 318 records, different events, similar rates
 - It doesn't matter whether we convict the guilty or the innocent, as long as the rate of incarceration matches the crime rate.

Harvard Study: The Actual Claims



- 51 claims
- 8 involved “negligent adverse event”
- *26 involved no medical injury at all*

Harvard Study

- Extrapolation: **180** *inadequately classified deaths* became 98,000 Americans dying every year due to malpractice

- Harvard Medical Practice Study (1996):
No correlation whatever between the presence or absence of medical negligence and outcome of malpractice litigation

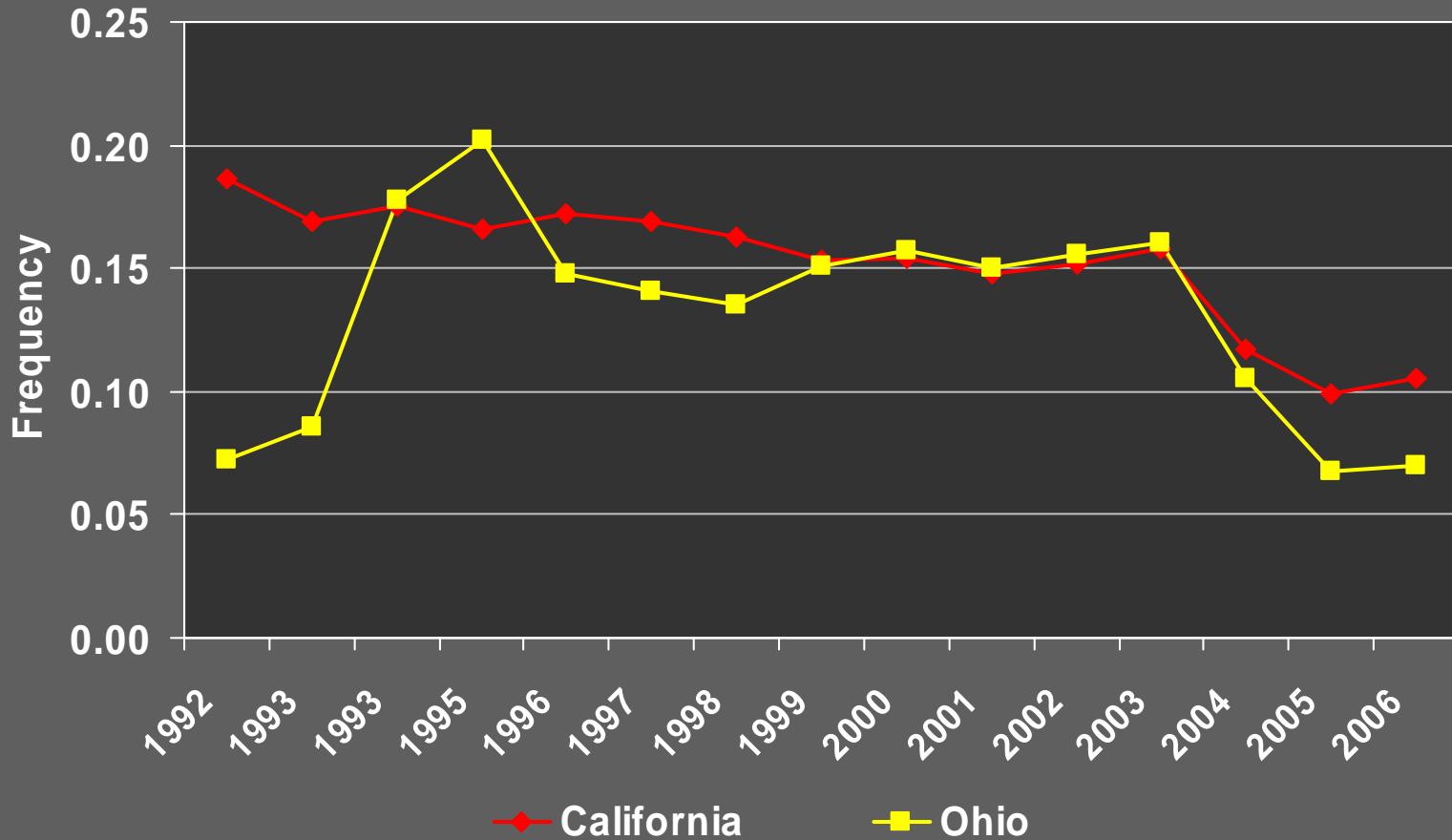
Randomness and the Fallacy of the Bad Doctor



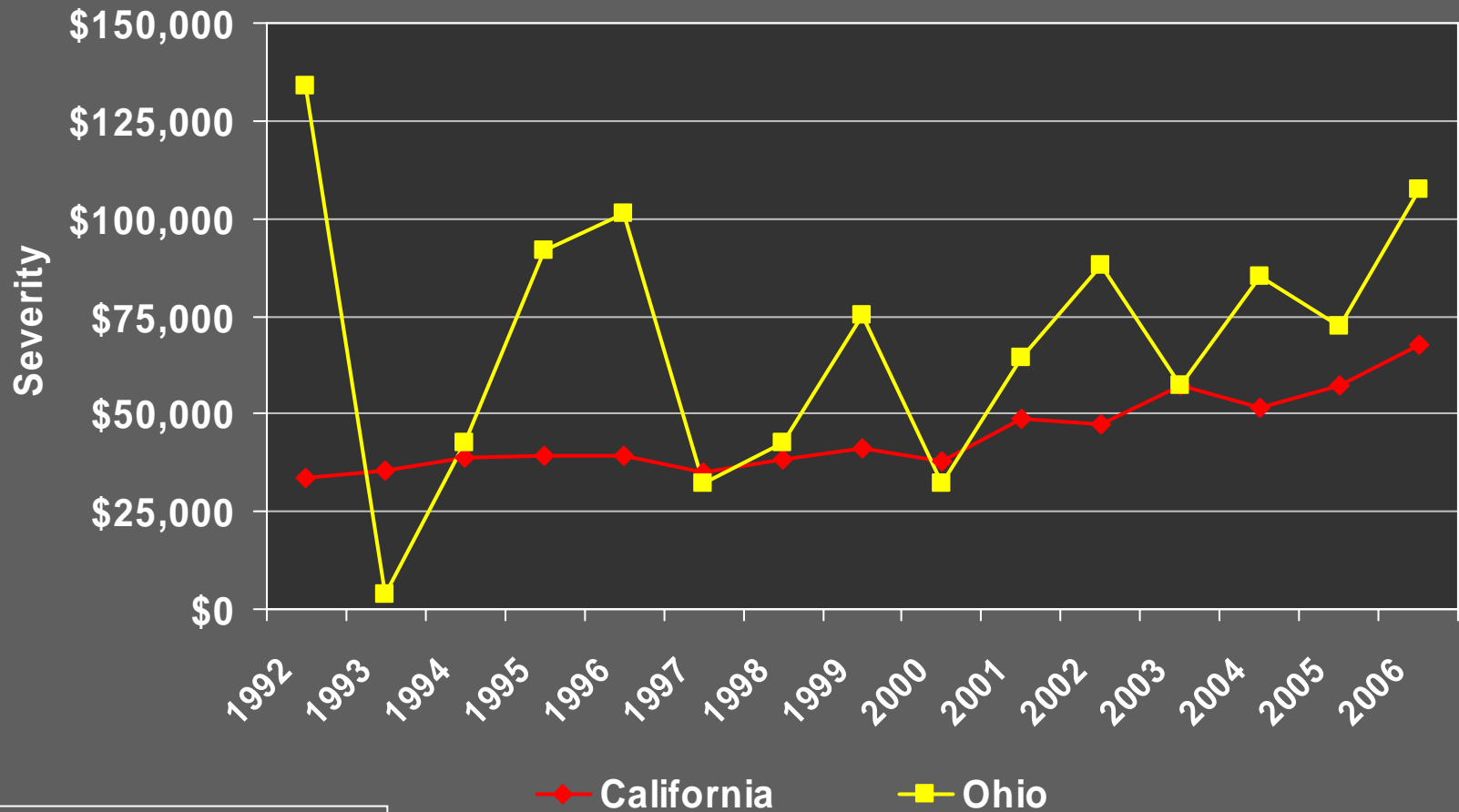
- 2% of the doctors cause 50% of the losses
 - Mirror image of causation
 - Harvard: Degree of injury, not medical negligence, predicts outcome
- Fewer than 1% of physicians have 2 paid claims over a 10-year period of time.
 - Only one in five doctors with a single paid claim gets a second within 10 years

OHIO

Frequency – California and Ohio

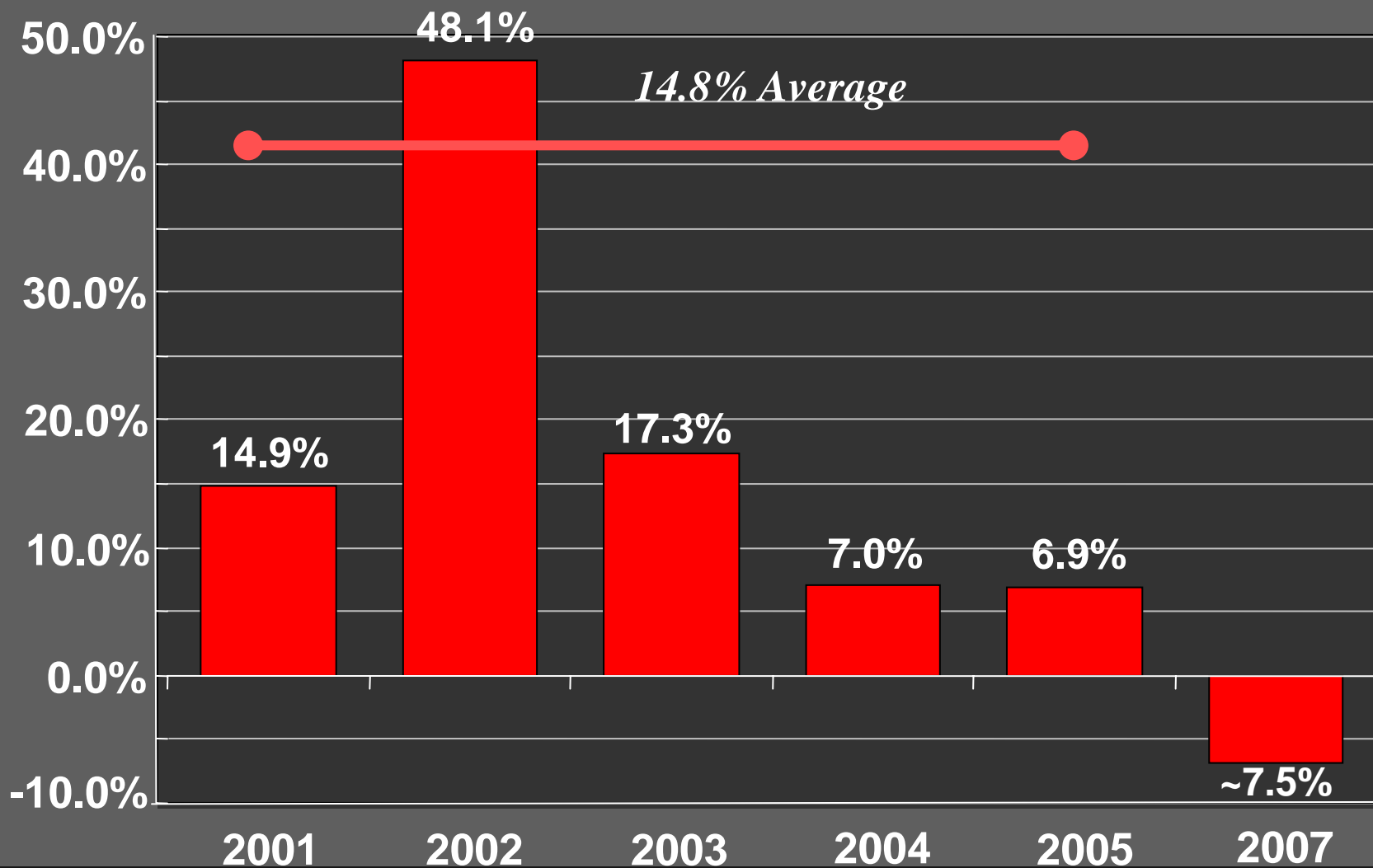


California and Ohio



\$1M Limit

TDC Ohio Average Rate Changes



- 2001-2006 severity outpacing California
- 2001-2006, TDC rates increased 14.8% per year but all has been between 2001 and 2005, corresponding to the increase in severity
 - No change in 2006
 - **7.5% to 10% rate reduction** for 2007
 - **5-7% dividend**

- OHIC is now wholly owned by TDC
 - Most doctors will be renewed with TDC policies
 - Rates and forms will be congruent

What Does This Mean for Ohio Doctors?



- Provides a major doctor-owned carrier with absolute commitment to Ohio
- Critical mass
 - Resources
 - Scale
 - Service
- *The Tribute Program*

Medical Liability Reform

What Should Medical Liability Reform Look Like?



- **Sustainable** insurance system providing full indemnification of actual loss
- **More** money for injured patients
- **Faster** settlements
- **Access** to medical care without impeding access to courts for truly injured patients
- Elimination of **double** costs
- **Assurance** that money is available at the time it is needed

Ohio Reforms

- Non-economic damages
 - \$350,000/\$500,000
 - \$500,000/\$1,000,000
- Collateral Source
- Periodic Payments
- Contingency Fee
 - Reviewable if greater than the non-economic damage award

- Joint and Several Liability
- Statute of Limitations and Repose
1/4
- Expert Testimony
- Peer Review Immunity

MICRA: Medical Injury Compensation Reform Act 1975

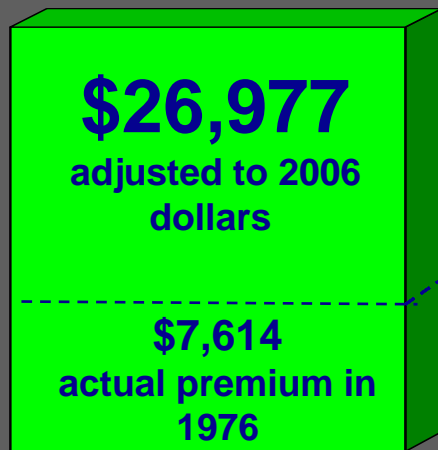


- 1. Mandates a \$250,000 cap on noneconomic damages ONLY
This is the same figure that was used for the victims of 9/11
- 2. Allows introduction into evidence of collateral sources of payment
- 3. Allows periodic payments of future damages
- 4. Provides for a sliding scale limit on attorneys' contingency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

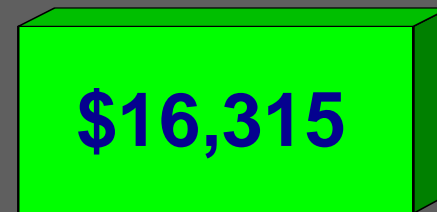
MICRA Helps Reduce California Medical Liability Premium Rates by 40%



The Doctors' Company 1976-2006



Average Premium 1976*



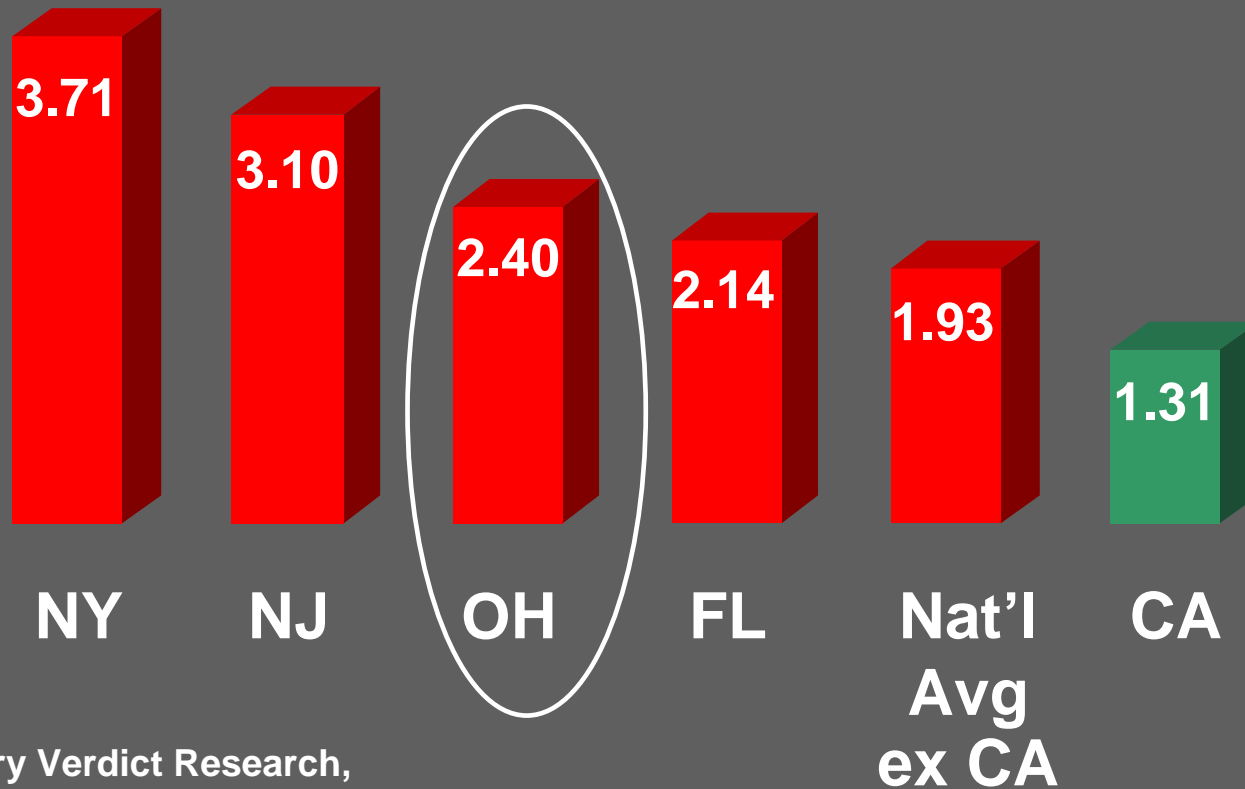
Average Premium 2006

* \$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

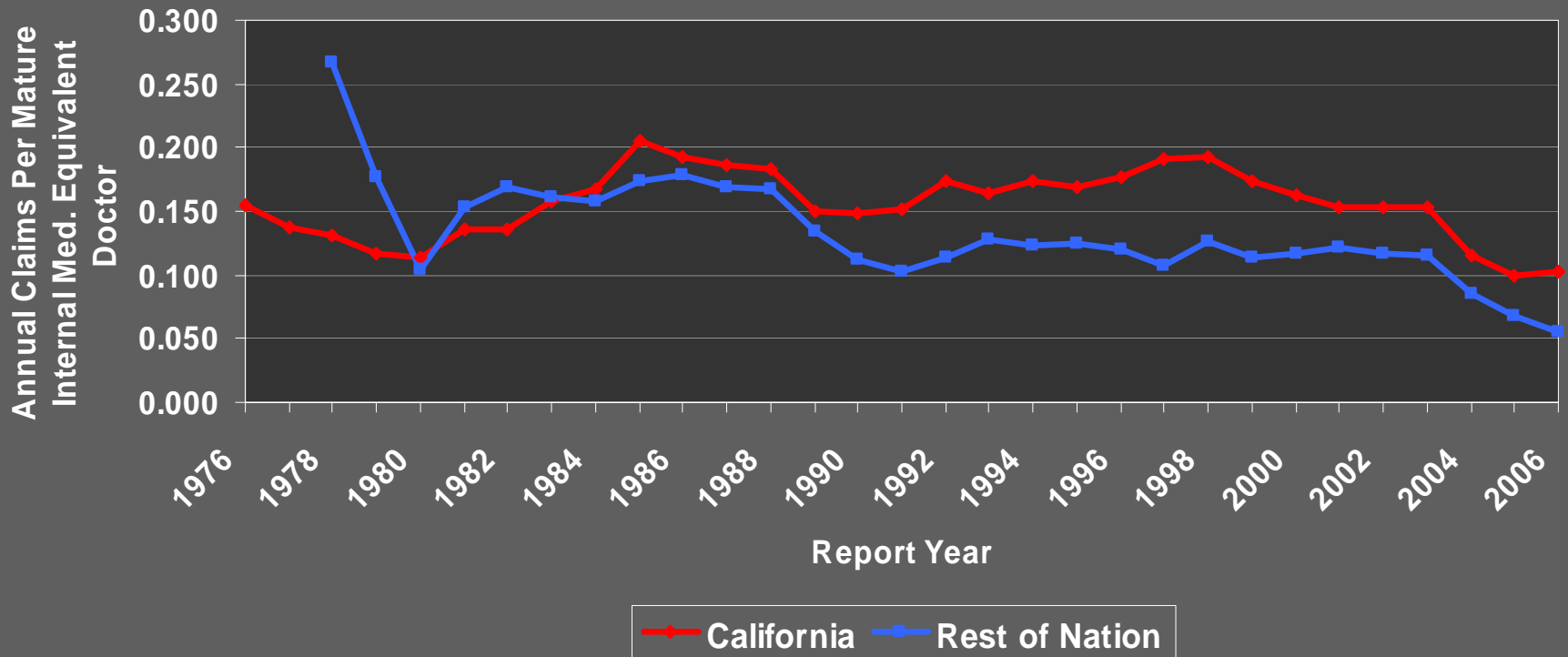


Sources: Jury Verdict Research, AMA

MICRA Does Not Limit Access to Courts



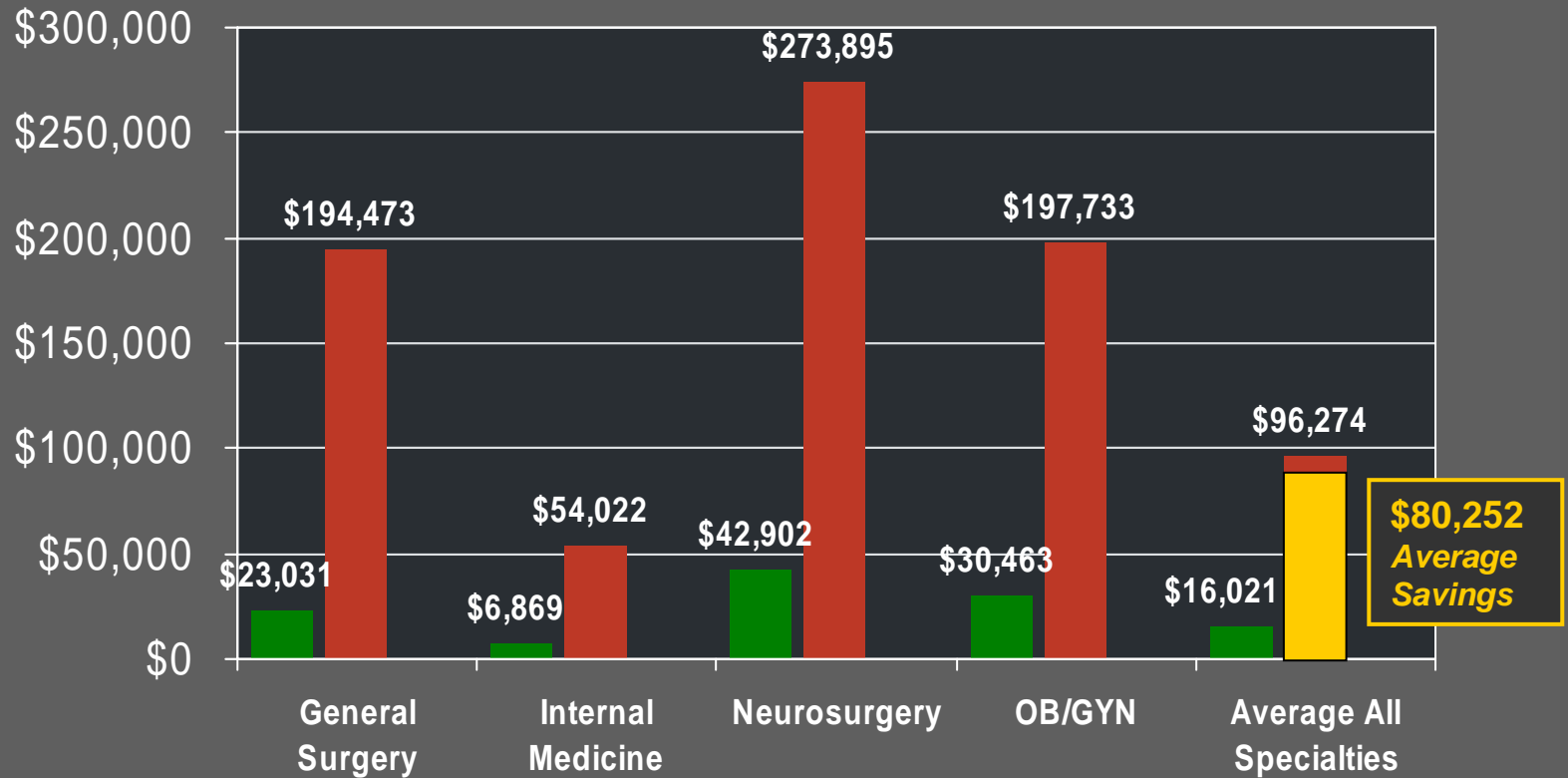
TDC PHYSICIAN CLAIM FREQUENCY



2006 MICRA Savings Chart



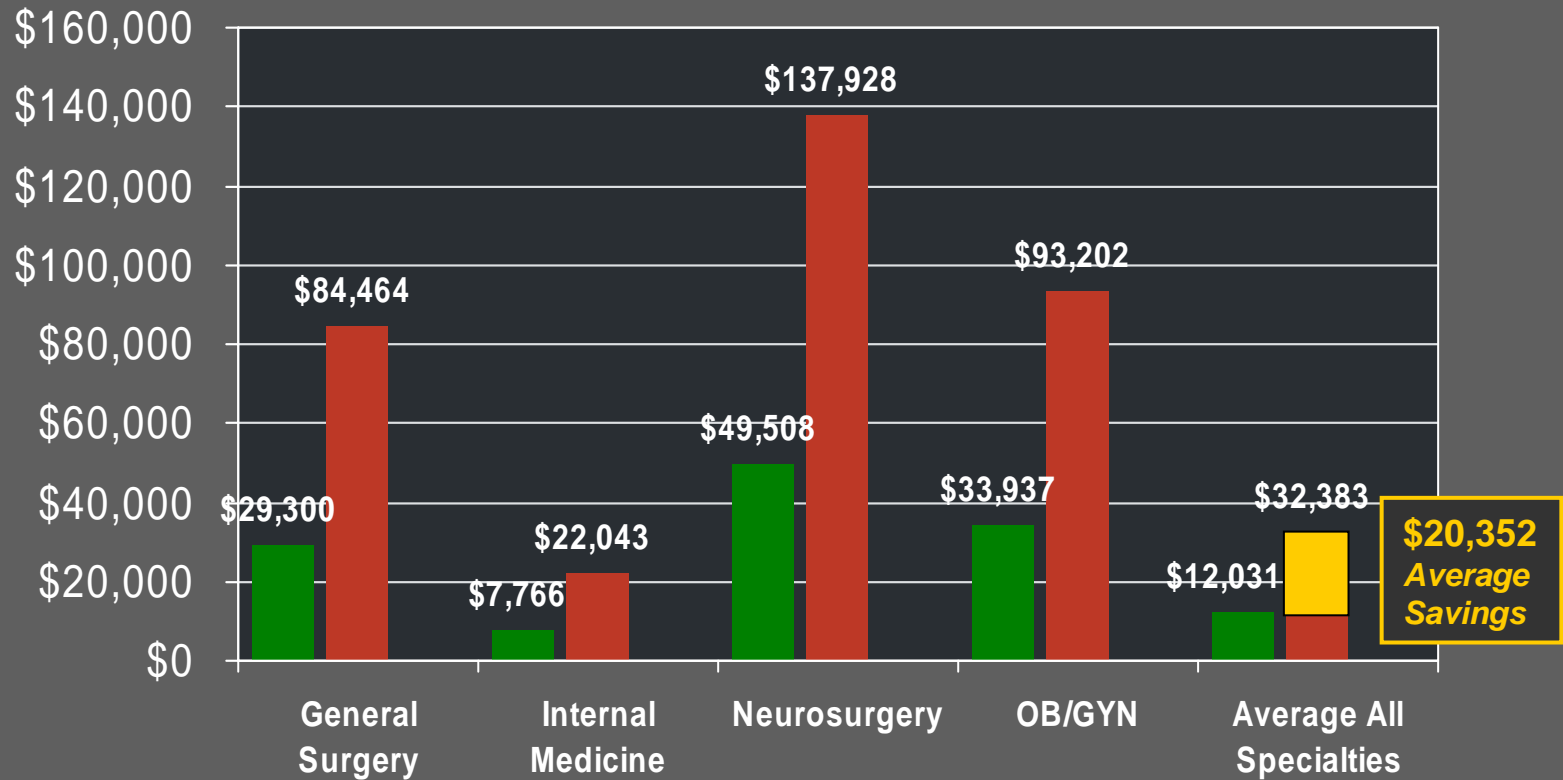
■ N. CA ■ FL-NY-MI Average ■ MICRA Savings



2006 MICRA Savings Chart



■ No CA ■ Ohio ■ MICRA Savings



Does the Country Need Medical Liability Reform?



- Yes, if you believe that a system that prosecutes the innocent three quarters of the time is unacceptable
- Yes, if you believe it is wrong to put more money in the pockets of attorneys than in the hands of injured patients
- Yes, if you believe that it is wrong for 15% of America's doctor to face malpractice litigation every year
 - Or a third of plastic surgeons, OBs, ER physicians and trauma surgeons, and orthopedists
 - Or half of all neurosurgeons

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?

Conclusions

- The malpractice insurance crisis is serious
- It is caused by both an extraordinarily high level of meritless litigation and a dramatic increase in the costs of indemnification
- It deforms the practice of medicine and limits access to care by our sickest and most vulnerable citizens

Conclusions

- Ohio's reforms are of definite value, but more can be done
- Coherent reform of medical systems is overdue
- Proven medical-legal reforms are available today

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**

Documentation and For More Information...



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