

Legal Reform Summit

Medical Liability Reform in the United(?) States

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Introduction



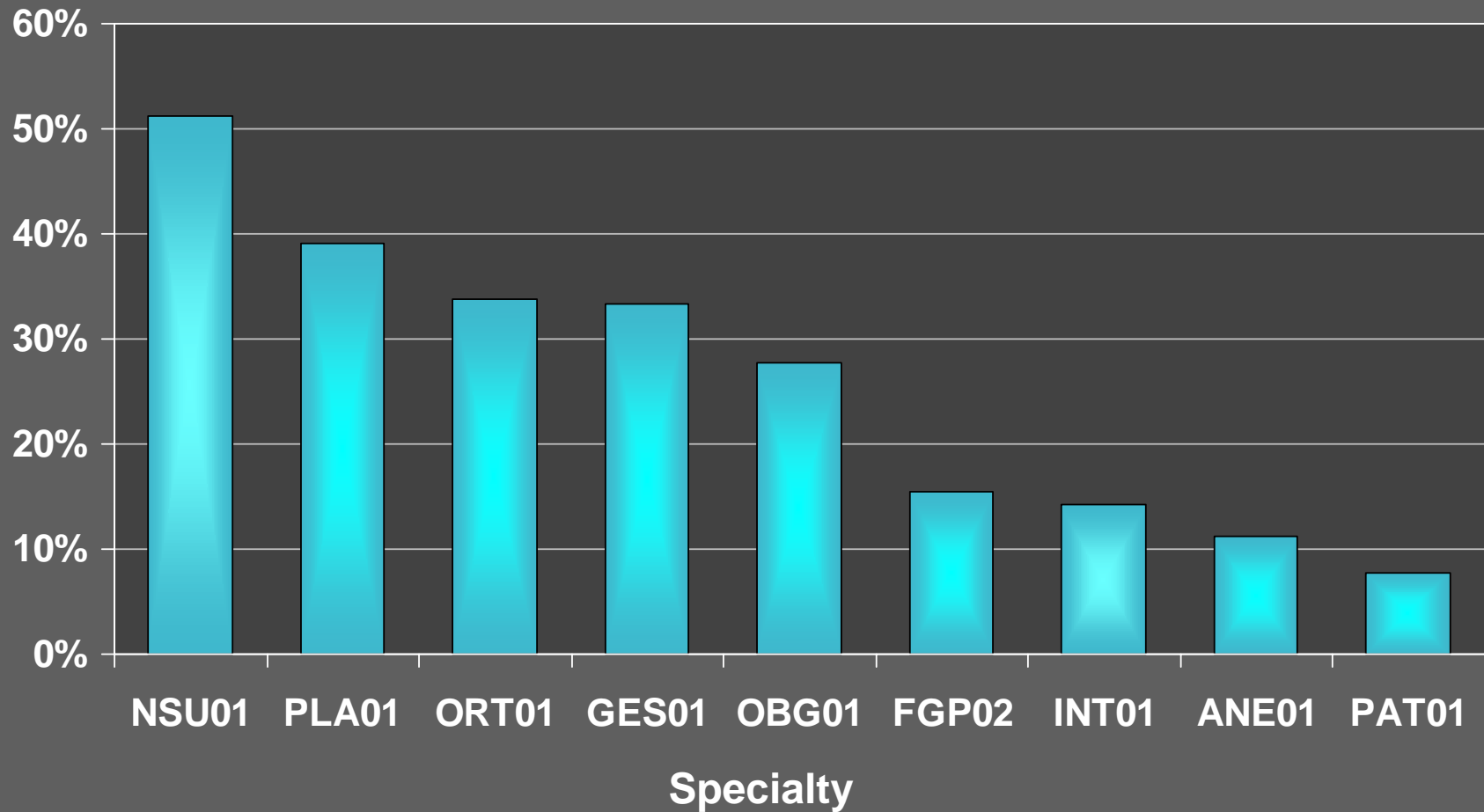
- Nature of the crisis
- State or federal issue
- California and MICRA
- Texas and HR 4

Nature of the Crisis

Frequency by Specialty 1995-2003



Frequency



Frequency

Meaning

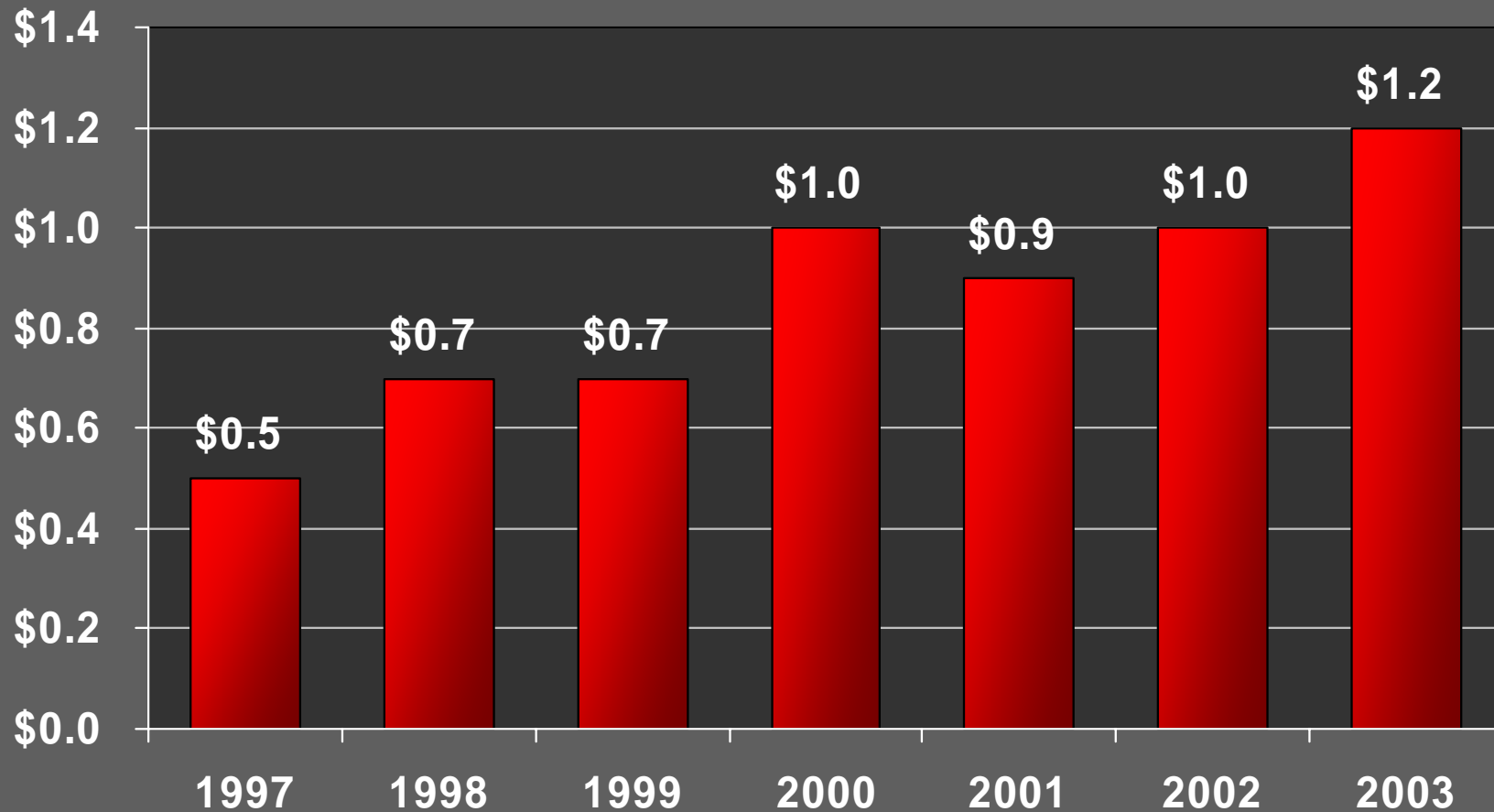
- On any given day, there are more than 125,000 malpractice suits in progress against America's 700,000 doctors.

Medical Malpractice Award Trends 1997-2003



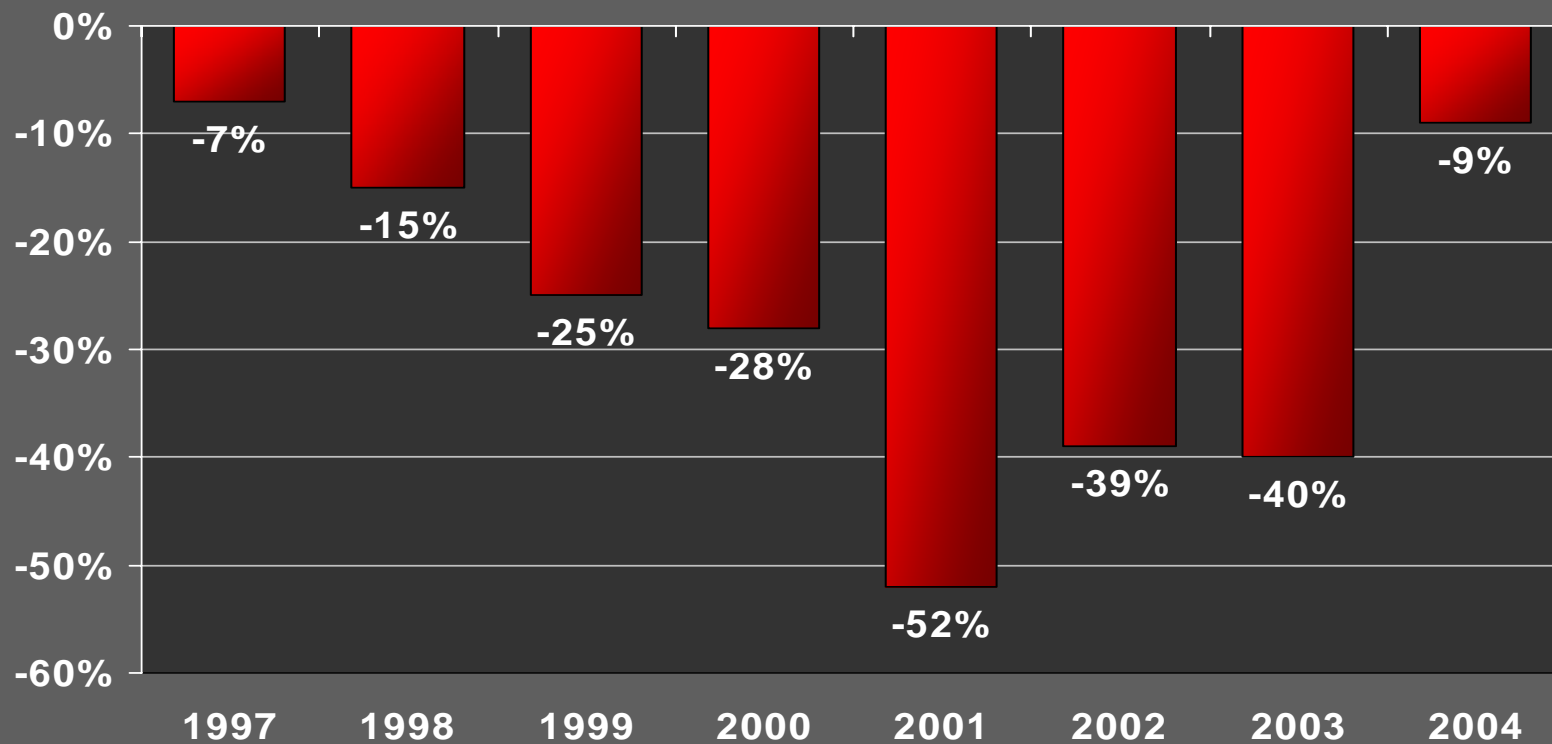
Millions

Award Medians



Source: Medical Liability Monitor

Industry Aggregate Medical Malpractice Net Underwriting Profit (Loss) Ratios



Source: Insurance Expense Exhibit from Highline Data Services

State or Federal Issue

- Federal Argument
 - 45% of all healthcare in the United States paid for by federal government.
 - Most health insurance covers care with no or limited geographic restrictions
 - National standards of care
 - Mobile and far flung population

State or Federal Issue



- Healthcare:
 - If healthcare is a right, wouldn't it need to be federally grounded?
- National Boards
- Specialty Boards
- Medicare
- Federal government should respond when the states cannot or will not (civil rights, disaster relief)

State or Federal Issue



- State Arguments
 - Physician licensure is by state
 - Most medical care is delivered in the community
 - Standards of medical care are defined in state law
 - Community and state standards of health care access
 - Medicaid
 - Most tort law has been state based

Success of Reforms at the State Level



- Existing system, and existing reforms are state based
- Problems of access are local
- Crises are local
 - If it's your family, it's a crisis
- Local face of medical care
 - Your congressman vs. Congress
- Medical reforms have been the spearhead for more general reforms

Success of Reforms at the State Level



- Would not overestimate the number of state successes nor the size of the gap on the federal side.
 - 70% of the American people
 - House of Representatives 10 times over
 - Presidential support
 - **Fewer than 10 senators**

MICRA

California Crisis



- 1975
 - 80% of all malpractice litigation in the century between 1970 and 1975.
 - **MICRA**
 - Crisis over
 - Permanently

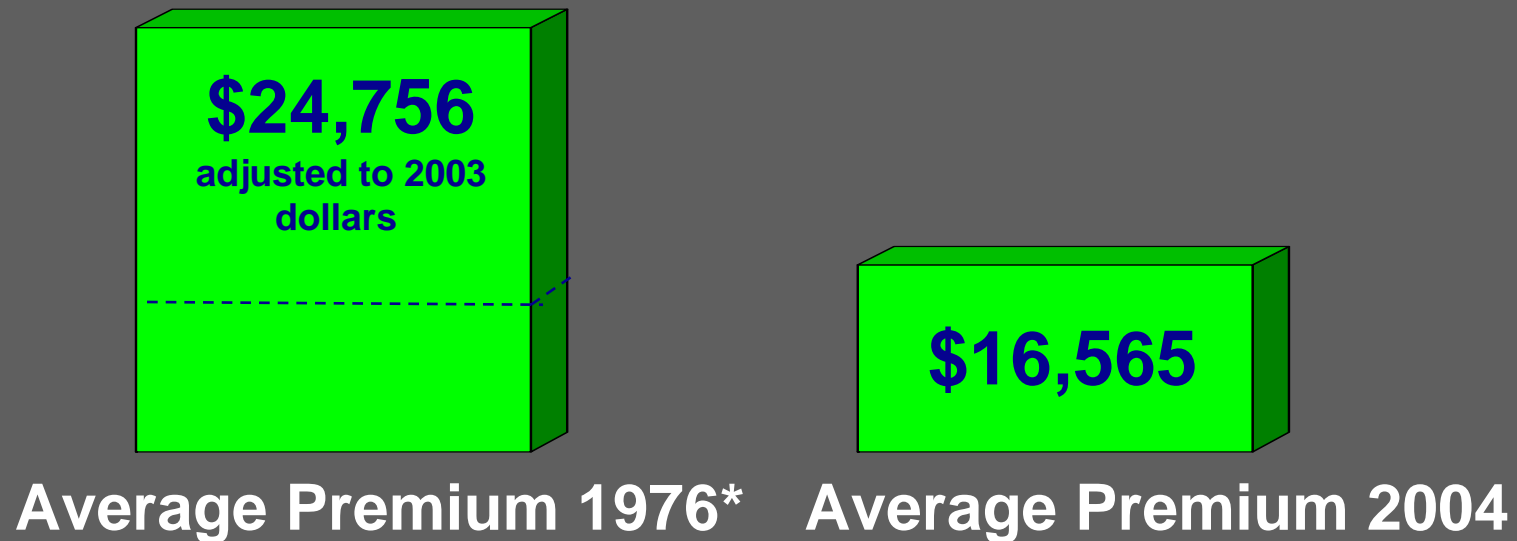
MICRA

- 1. Mandates a \$250,000 cap on noneconomic damages ONLY.
- 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 33%



The Doctors' Company 1976-2004

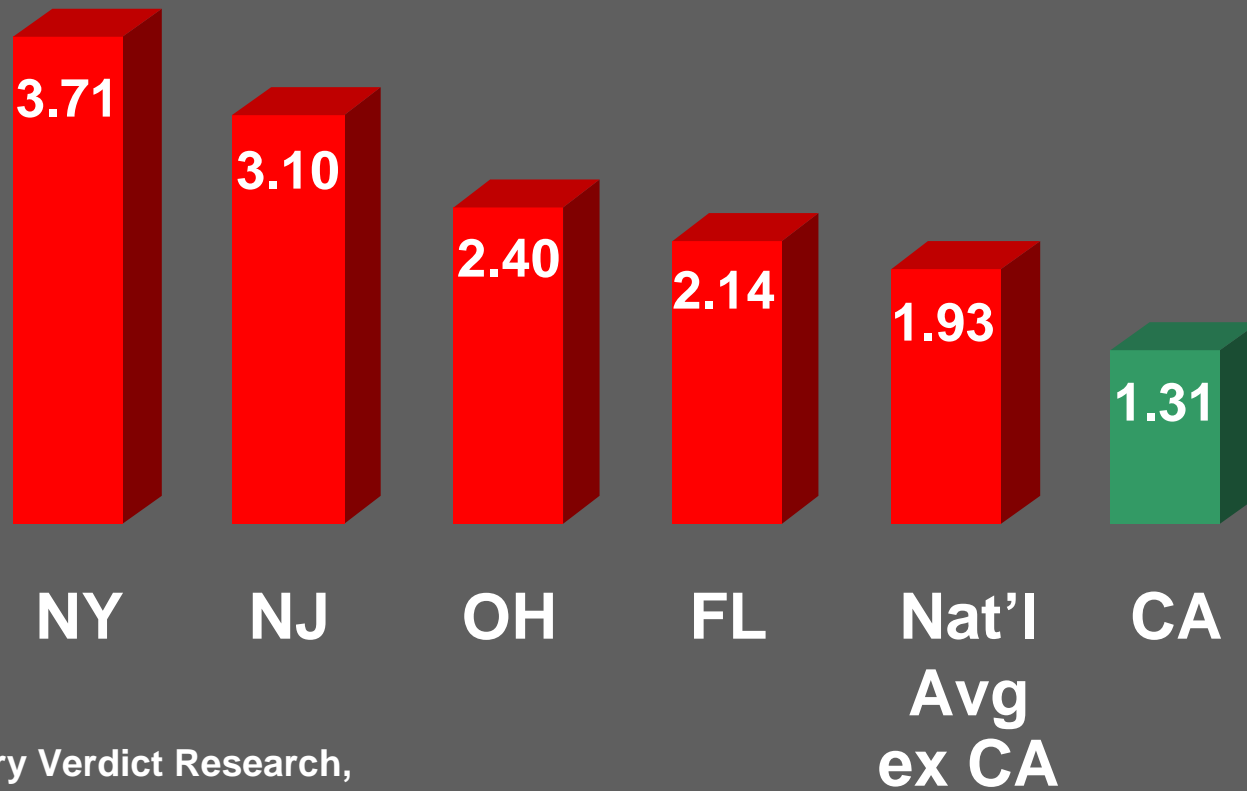


* \$7,614 average premium adjusted to 2003 dollars based on the Average Consumer Price Index for a \$1 Million/ \$3 Million Claims-Made Policy Premium

MICRA Reduces Verdict Cost and Frequency

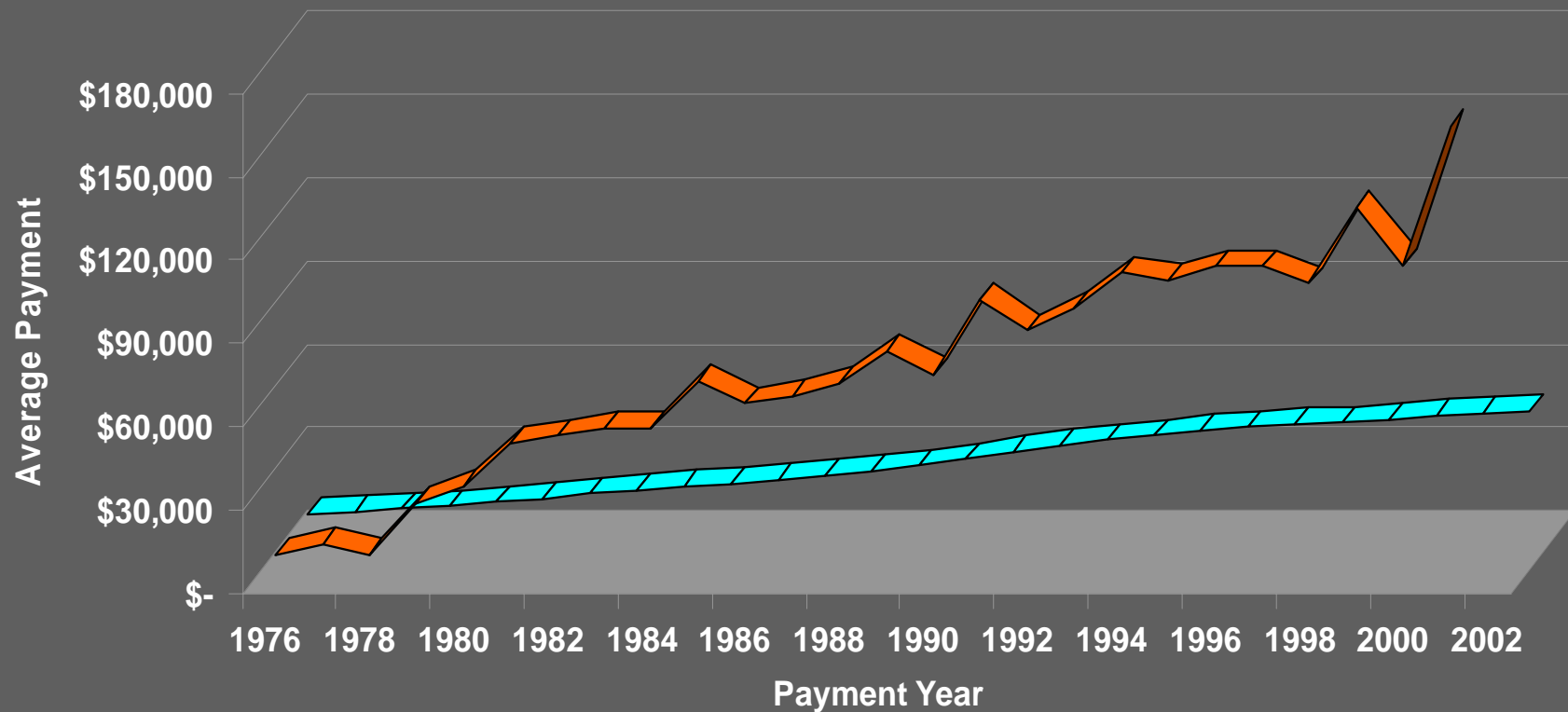


\$1 Million+ Verdicts Per 1,000 Doctors



Sources: Jury Verdict Research,
AMA

Average Medical Liability Claim in CA vs. Average Claim Adjusted for Inflation 1976-2001

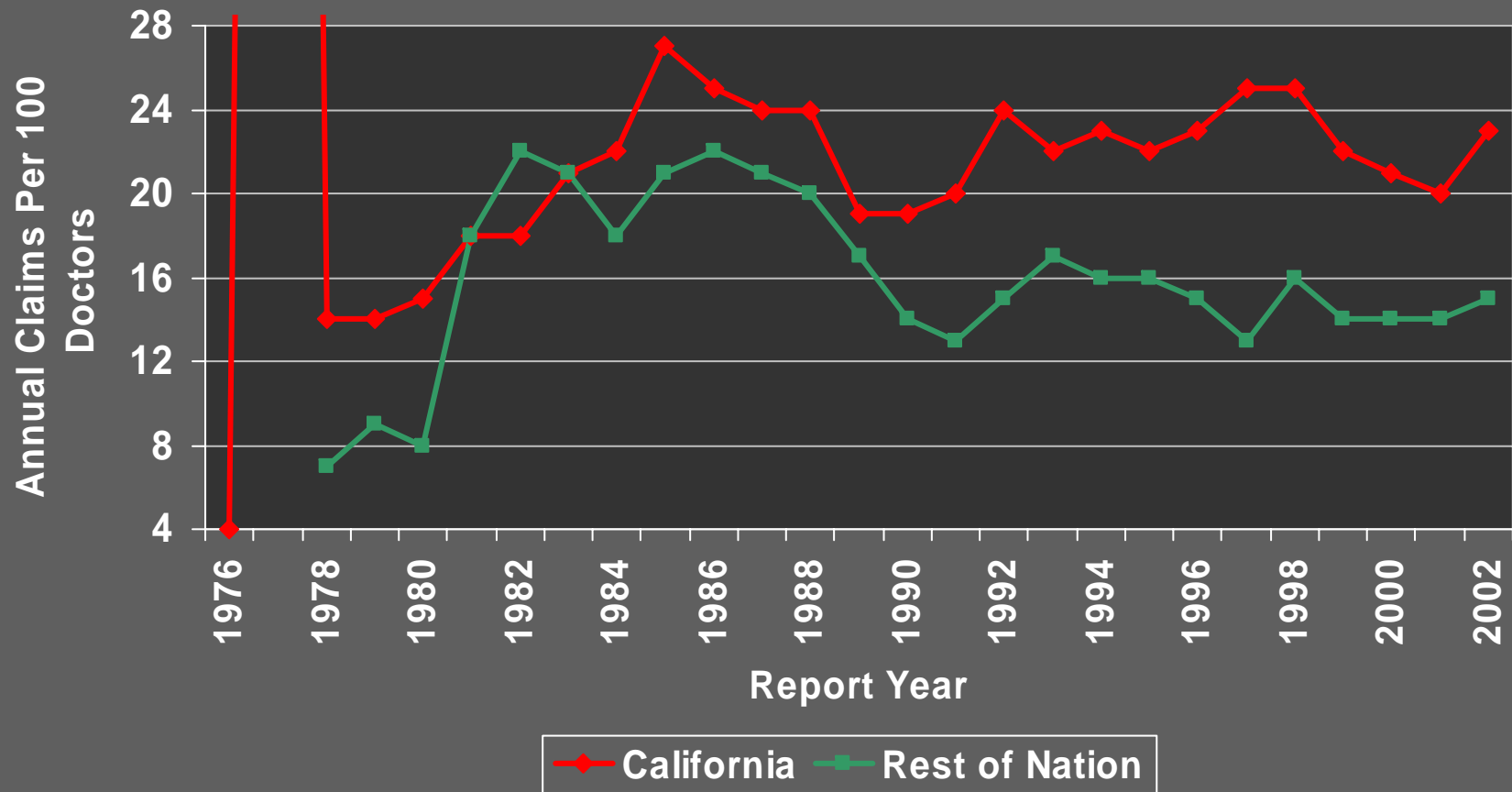


- Actual average physician medical liability claim paid in CA 1976-2001.
- Average medical liability claim in CA beginning 1976, adjusted for rate of inflation (CPI) 1976-2001.

MICRA Does Not Limit Access to Courts



TDC Physician Claim Frequency

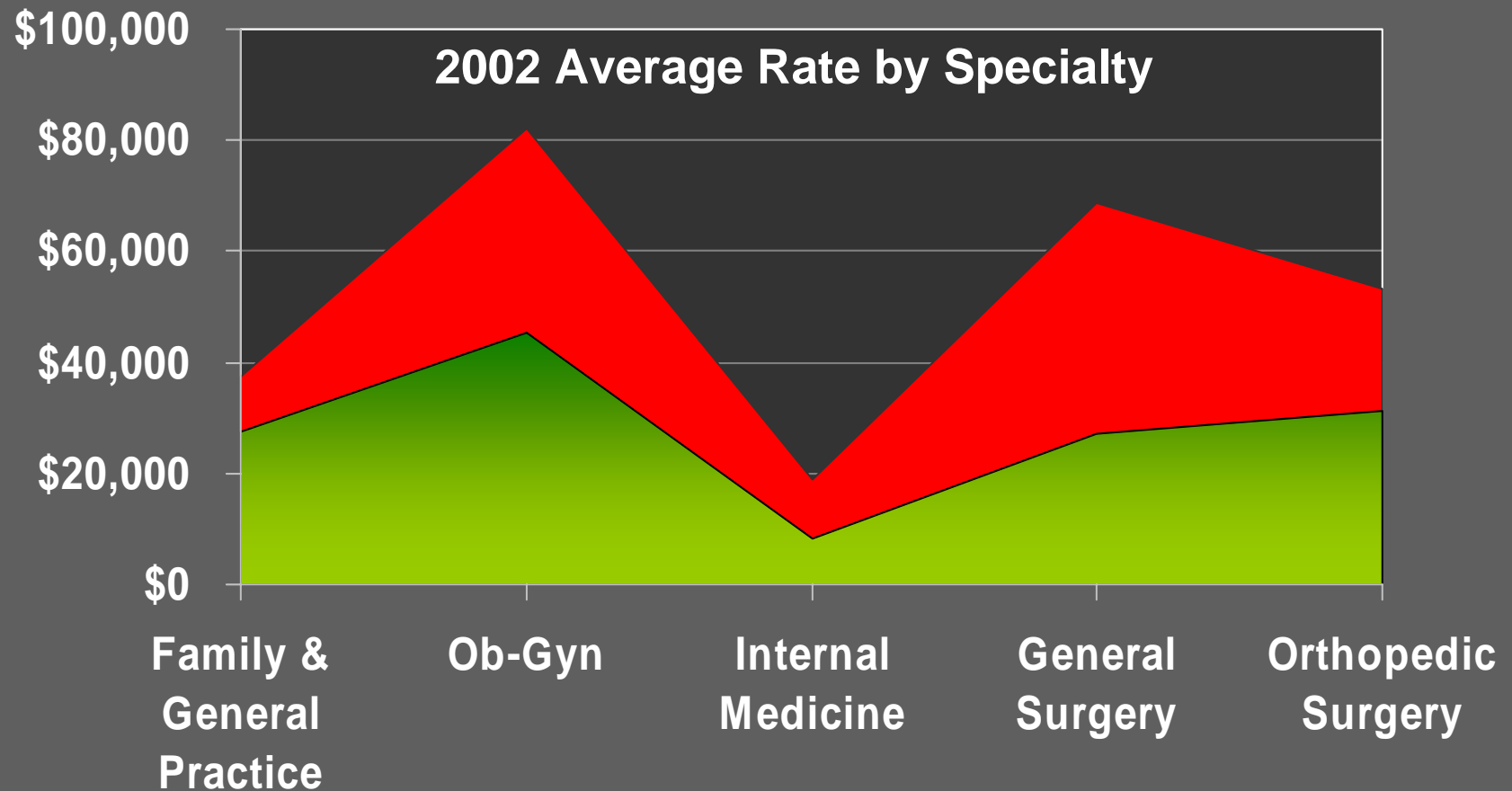


Texas

California vs. Texas: The Tort Tax



■ Texas ■ California



Texas Crisis



- Unprecedented frequency
- Non-economic damages sky-rocketing
- Serious access to care issues
- Doctors took to the streets
- Sophisticated coalition building and unified political effort
- (Contrast efforts at federal level)

- Comprehensive Reforms
 - \$250,000 cap on non-economic damages for physicians
 - Periodic Payments
 - Joint and Several Liability
 - Expert Witness
 - Procedural changes
- Constitutional amendment

Texas Results



- Rates

- 2003: **54% rate Increase**
- 2004: **17% rate Decrease**
- 2005: Additional decreases

****Remember the math***

- Competition

- 11 new companies
- State JUA: 1800 down to 166

- Access to Care

- 3000 new physicians in Texas since 2003

- Texas is a crisis state no more

Other States



- Placebo reforms
 - Texas 1996
 - Nevada 2002
- Significant Reforms
 - Mississippi
 - Oklahoma
 - Georgia
 - Idaho
 - Missouri

- Useful Reforms
 - Florida
 - Ohio
 - Pennsylvania
- Reforms which ignore the primary issues
 - State funds
 - Expert witness reforms
 - Limits on punitive damages
 - I'm Sorry programs

Summary



- Health care affects everyone in the country, but is delivered locally
- Crises are felt in states and communities
- Coalitions are easier to build on the state level
- Reform is needed: there is no reason to make it an either/or proposition

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**