

**ACS 2005**

***Legal Reform and the  
Academic Medical Center***

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# Introduction

- *Current Issues affecting practice and risk in academic medicine*
- *Who sets the standard of care?*
- *Epidemic of medical error?*
- *The case for legal reform*

# ***Litigation Profile of Academic Medicine***

## *House Staff Supervision*

- What constitutes adequate supervision is “unsettled in the law”
  - Standards of care are *de facto* national
- House staff held to high standards of care
- Attending physicians may be **vicariously and/or directly liable**
- Litigation **traumatic** to both residents and attendings

Kachalia and Studdert, JAMA 2004 Sep 1;292(9):1060

# Current Issues

- *Sicker* patients
  - Tertiary care: more adverse outcomes
- *Healthier* patients
  - Need for practice revenue
    - *Movement into primary care*
- Loss of unified leadership between medical schools and hospitals

# Current Issues

- Longer **communication** lines
  - Interdepartmental instead of colleague to colleague
  - Availability of records/films
- Greater difficulty **disciplining** problem physicians
- Higher **defense costs** due to demand for more and more expensive witnesses

- Individual Premium Allocation
  - Gives every physician a stake in legal reform
  - May result in subsidization of higher risk physicians or departments
  - Individual physicians or departments may be forced to share a higher premium burden

# Who Sets Standards of Care?



- Community vs. National
- Medical vs. Legal
- The Expert Witness problem

# Epidemic of Medical Error?

# 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: Observations



- More than half of cases met screening criteria
- Physician reviewers were not specialists
- Did not distinguish between major and minor events
- Did not distinguish events under physician control
- Based exclusively on in-patient population
- *40-fold variation among hospitals*
  - *Academic hospitals had the highest adverse event rate*
- 10-fold variation among specialties

# Harvard Study: The Actual Claims



- 51 claims
- 8 involved “negligent adverse event”
- *26 involved no medical injury at all*
- *7.6 times as many negligent adverse events as malpractice claims*
- *Likelihood of a negligent adverse event resulting in litigation 1 in 65 (1.53%)*

# Harvard Study

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

# Harvard, IOM, and Malpractice Litigation: Final Conclusion



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

# *The Case for MICRA*

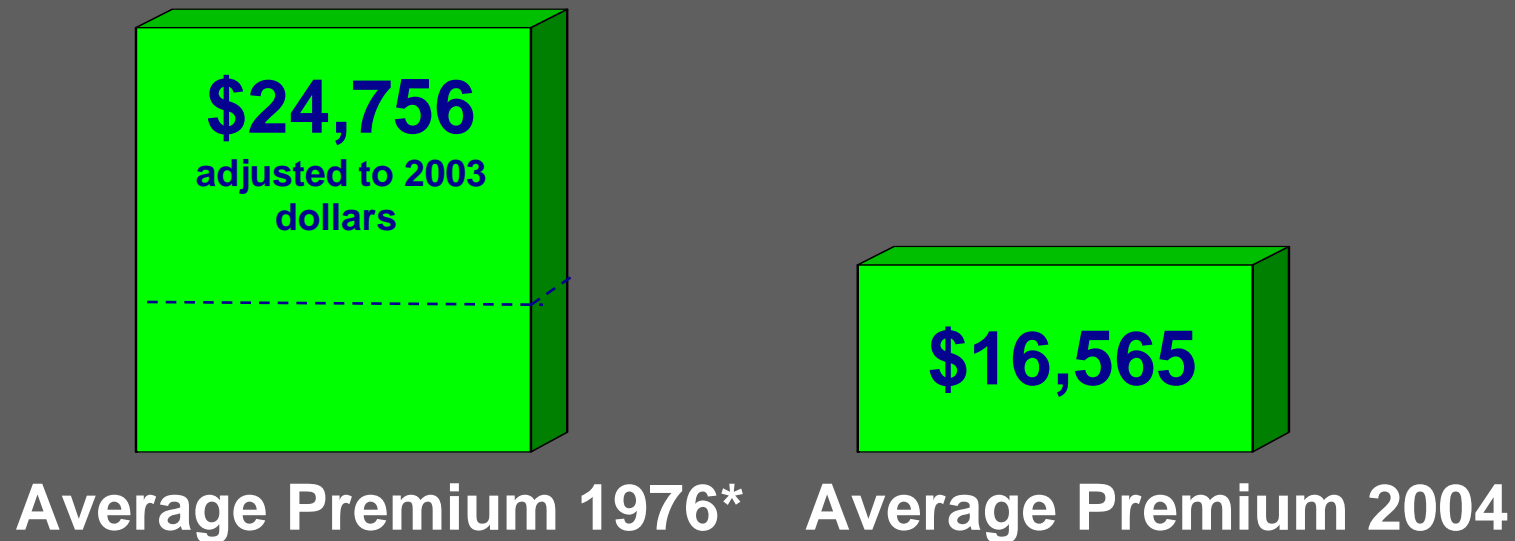
# MICRA

- 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

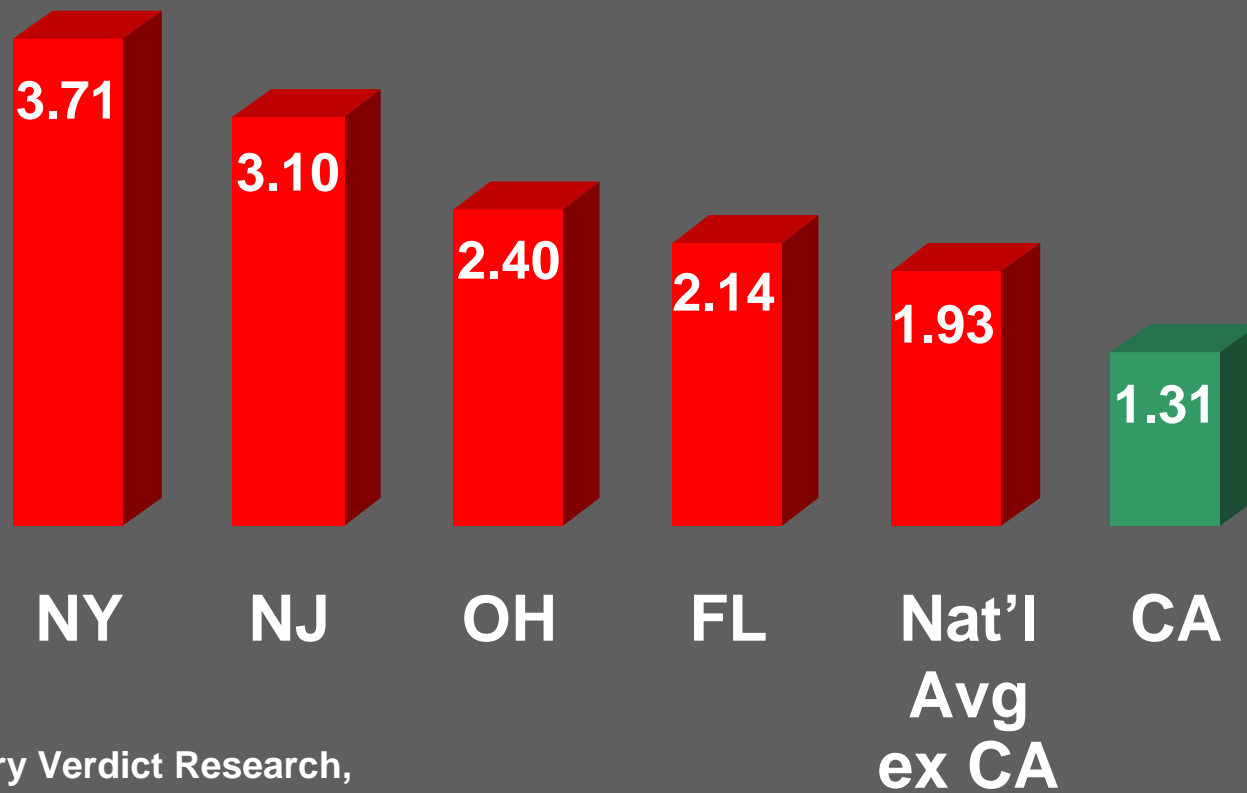


\* \$7,614 average premium adjusted to 2003 dollars based on the Average Consumer Price Index for a \$1 Million/ \$3 Million Claims-Made Policy Premium

# MICRA Reduces Verdict Cost and Frequency

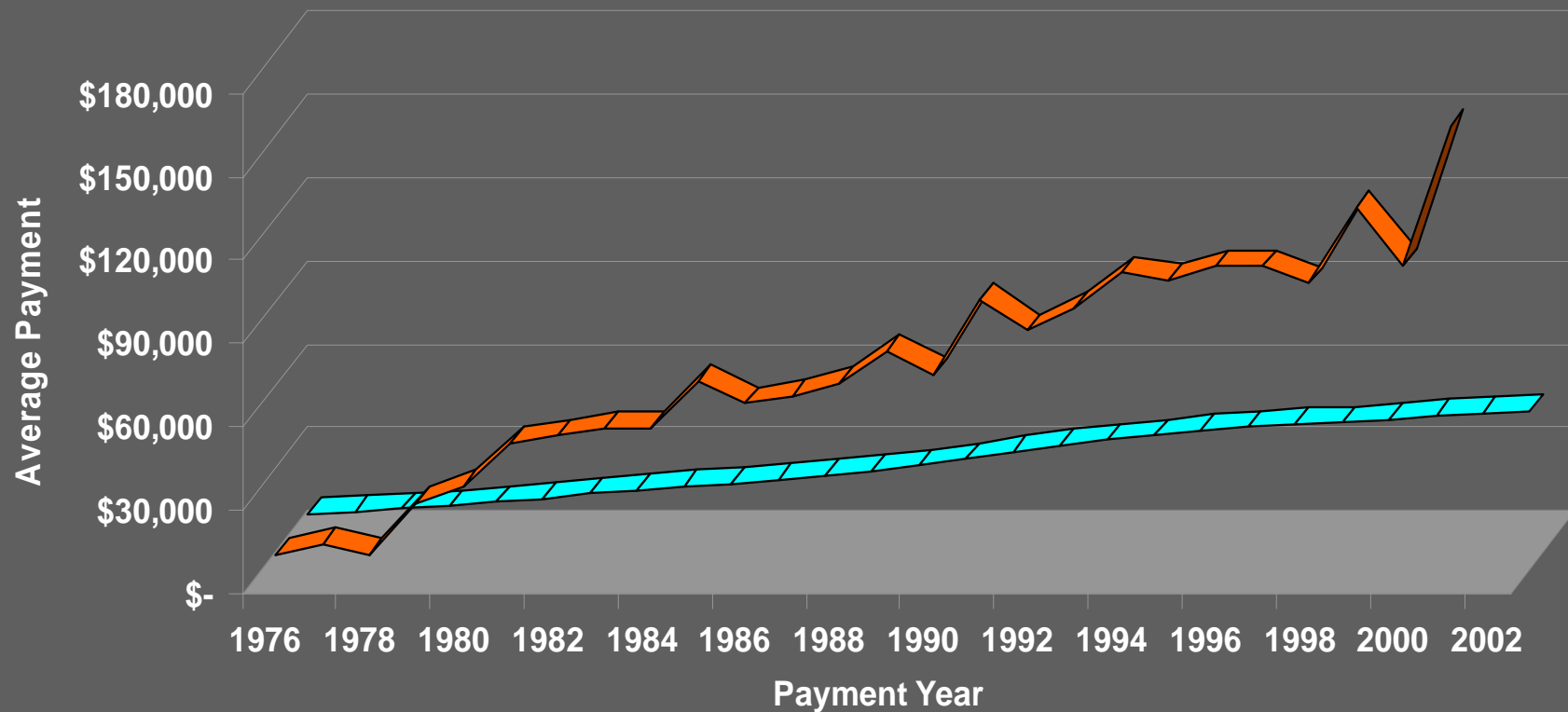




\$1 Million+ Verdicts Per 1,000 Doctors



Sources: Jury Verdict Research,  
AMA

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

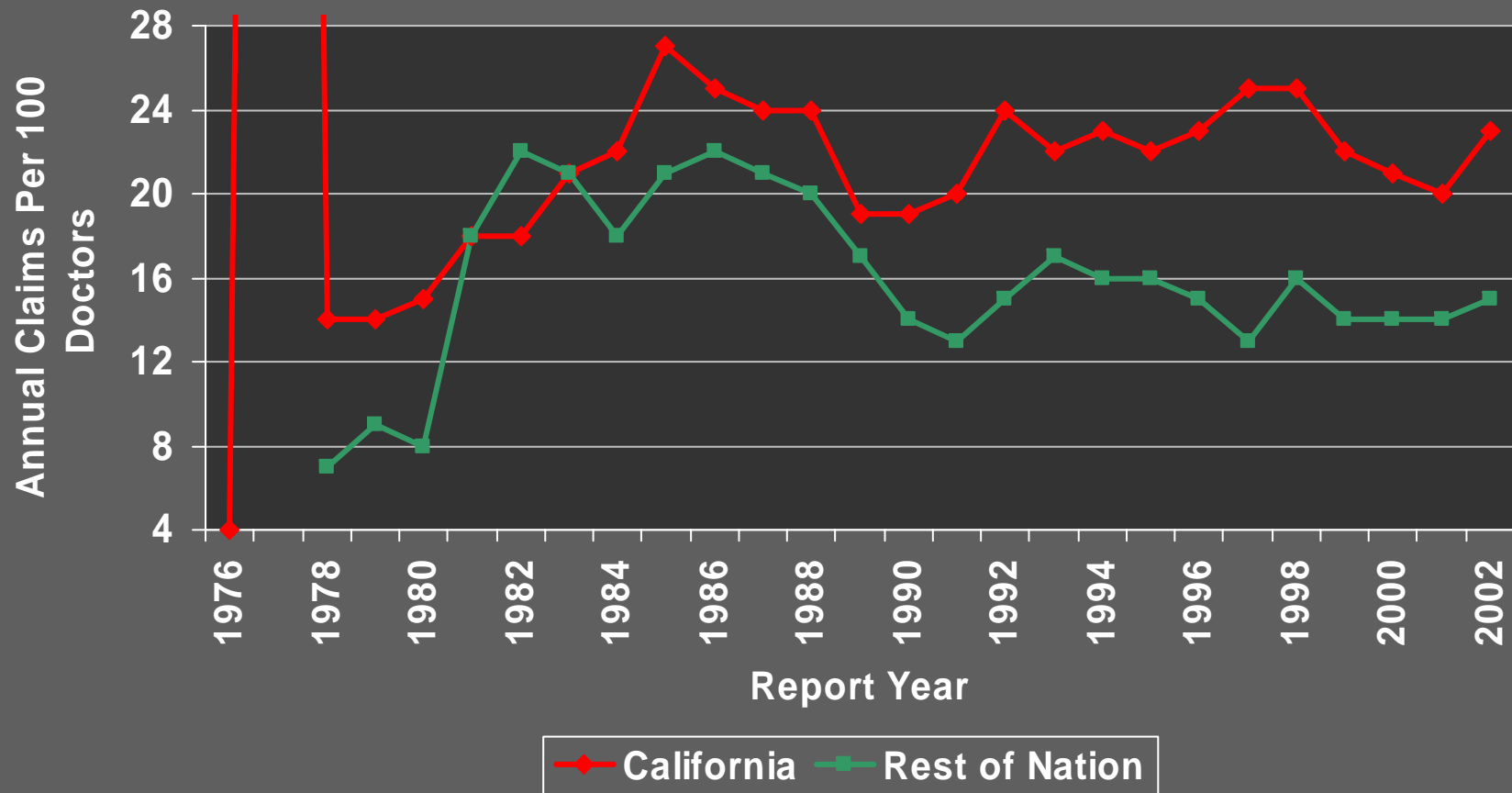


-  Actual average physician medical liability claim paid in CA 1976-2001.
-  Average medical liability claim in CA beginning 1976, adjusted for rate of inflation (CPI) 1976-2001.

# MICRA Does Not Limit Access to Courts



## TDC Physician Claim Frequency



# Isn't the Tort System Helpful in Improving Medical Quality?



- 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 80% of the time, or a prosecutor who went after the innocent 80% of the time?

# Summary

- From a plaintiff attorney's viewpoint, some current trends in academic medicine create attractive **targets of opportunity**
- There are **no sanctuaries** in the legal assault on the practice of medicine
- **MICRA** reforms are an important and effective step forward in rationalizing our system of medical-legal jurisprudence

# 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)**