

ASPS

Is There a Medical Malpractice Insurance Crisis in the United States?

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- Chairman/CEO, The Doctors Company
- September 25, 2005

If by Crisis, You Mean...



- That as we sit here today there are more than **125,000** malpractice claims pending against America's physicians, and that next week there will be 750 more
- That the **vast majority** (>75%) of malpractice claims are found to be **without merit**
- That malpractice premiums are becoming **unaffordable**
- That more than **50%** of all premium dollars goes to **attorneys** rather than to injured patients

If by Crisis, You Mean...



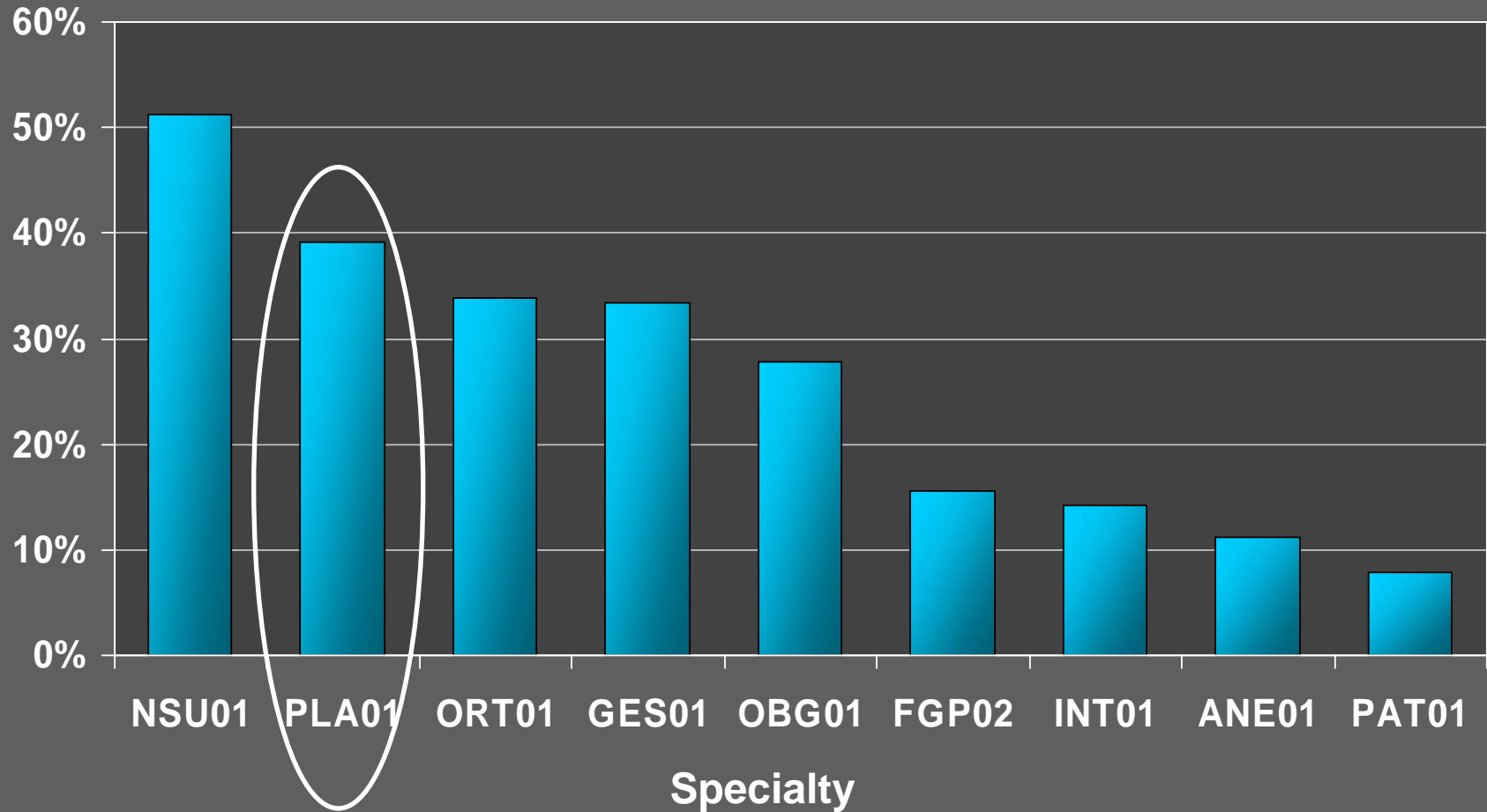
- That *one third* of board certified plastic surgeons face a malpractice claim every year
- That the median cost of a malpractice verdict *doubled* from \$500,000 to *\$1 million* between 1997 and 2000 and that the mean is now close to *\$5 million*
- That the current system *distorts* medical decision-making and adds significantly to the cost of medical care

Then absolutely there is a malpractice insurance crisis in the United States

Frequency by Specialty 1995-2003



Frequency

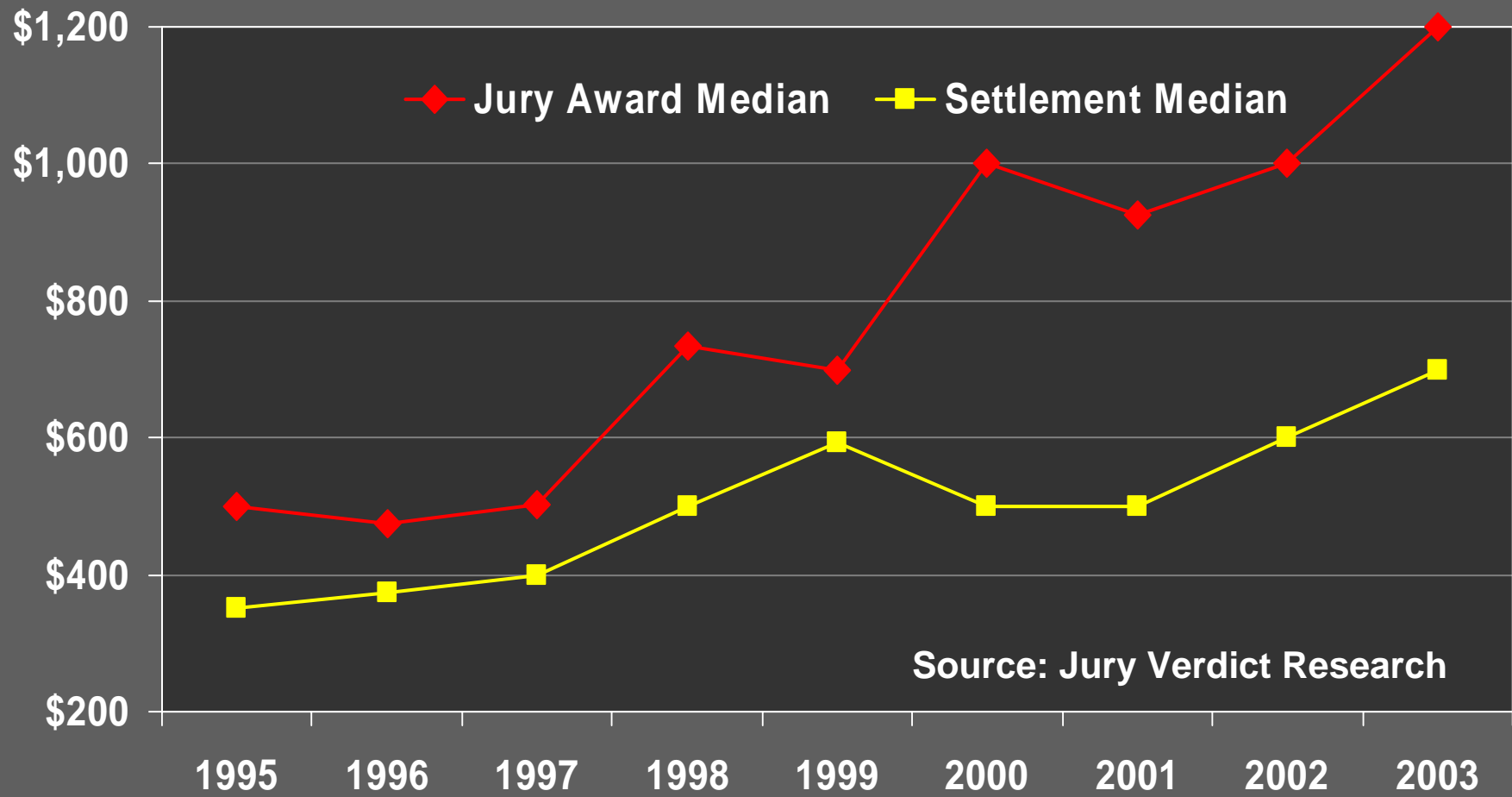


Severity: National Medians



National Jury Award and Settlement Medians for Medical Malpractice Cases

(000's)



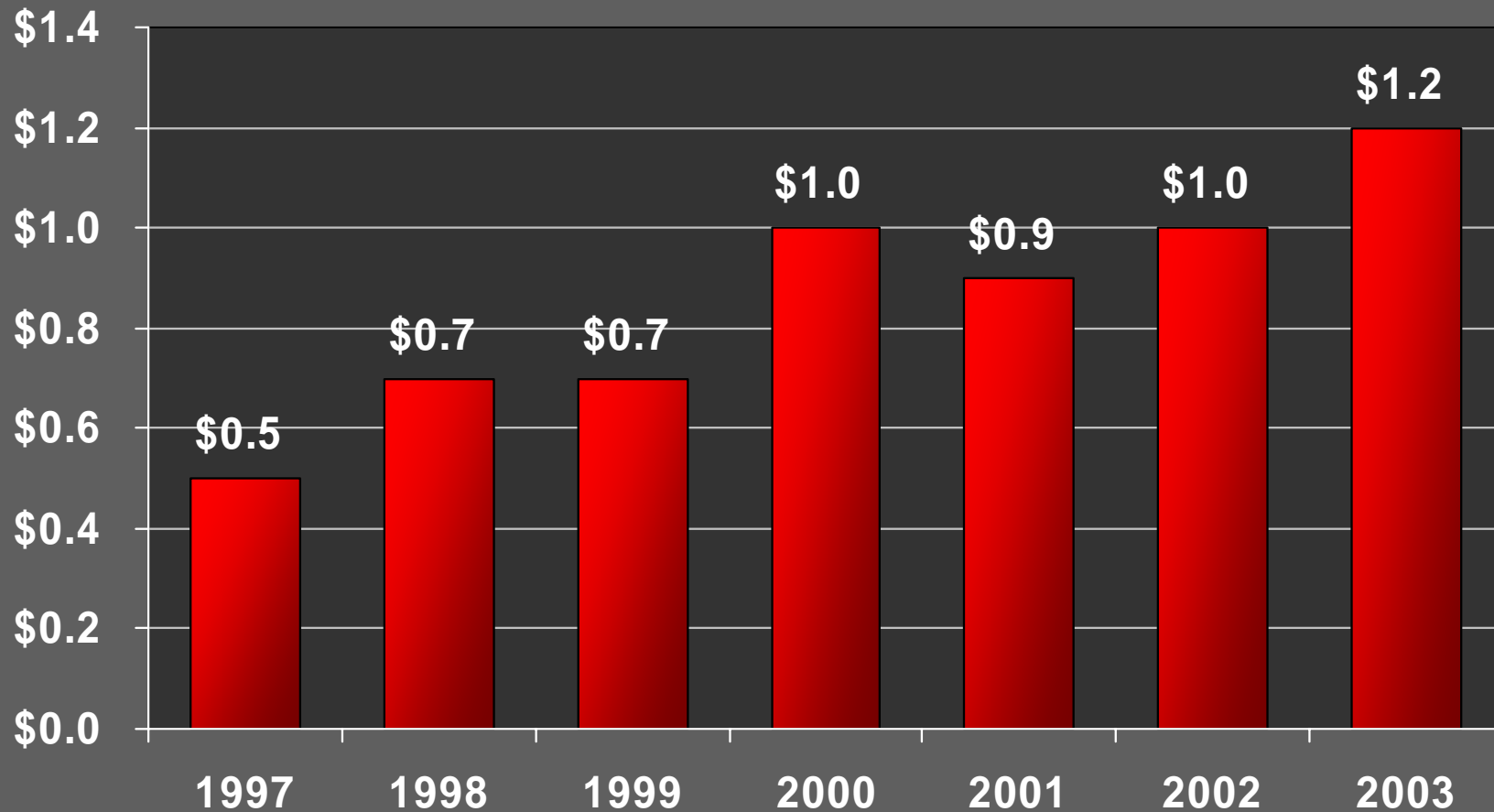
Source: Jury Verdict Research

Medical Malpractice Award Trends 1997-2003



Millions

Award Medians



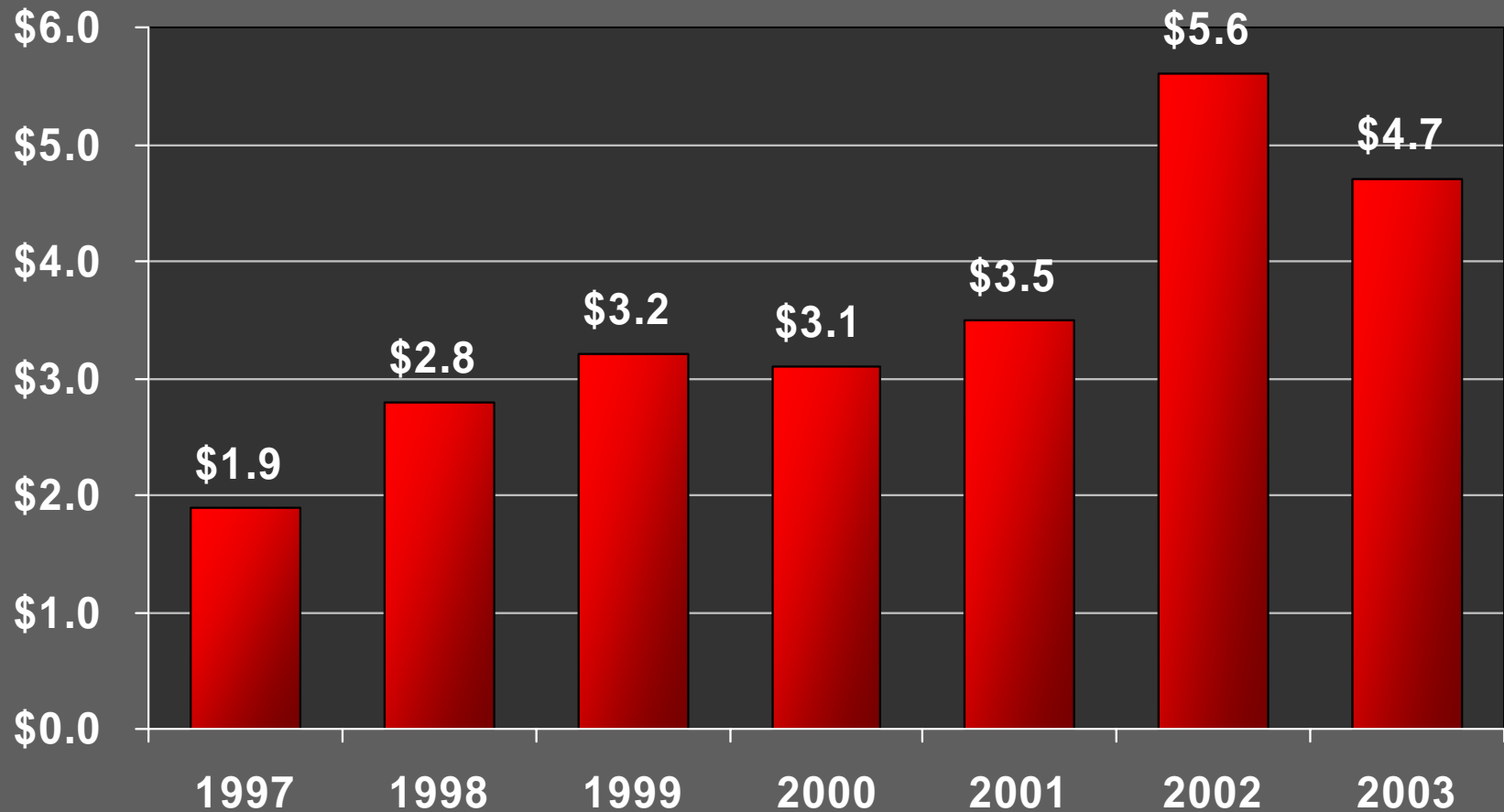
Source: Medical Liability Monitor

Medical Malpractice Award Trends 1997-2003



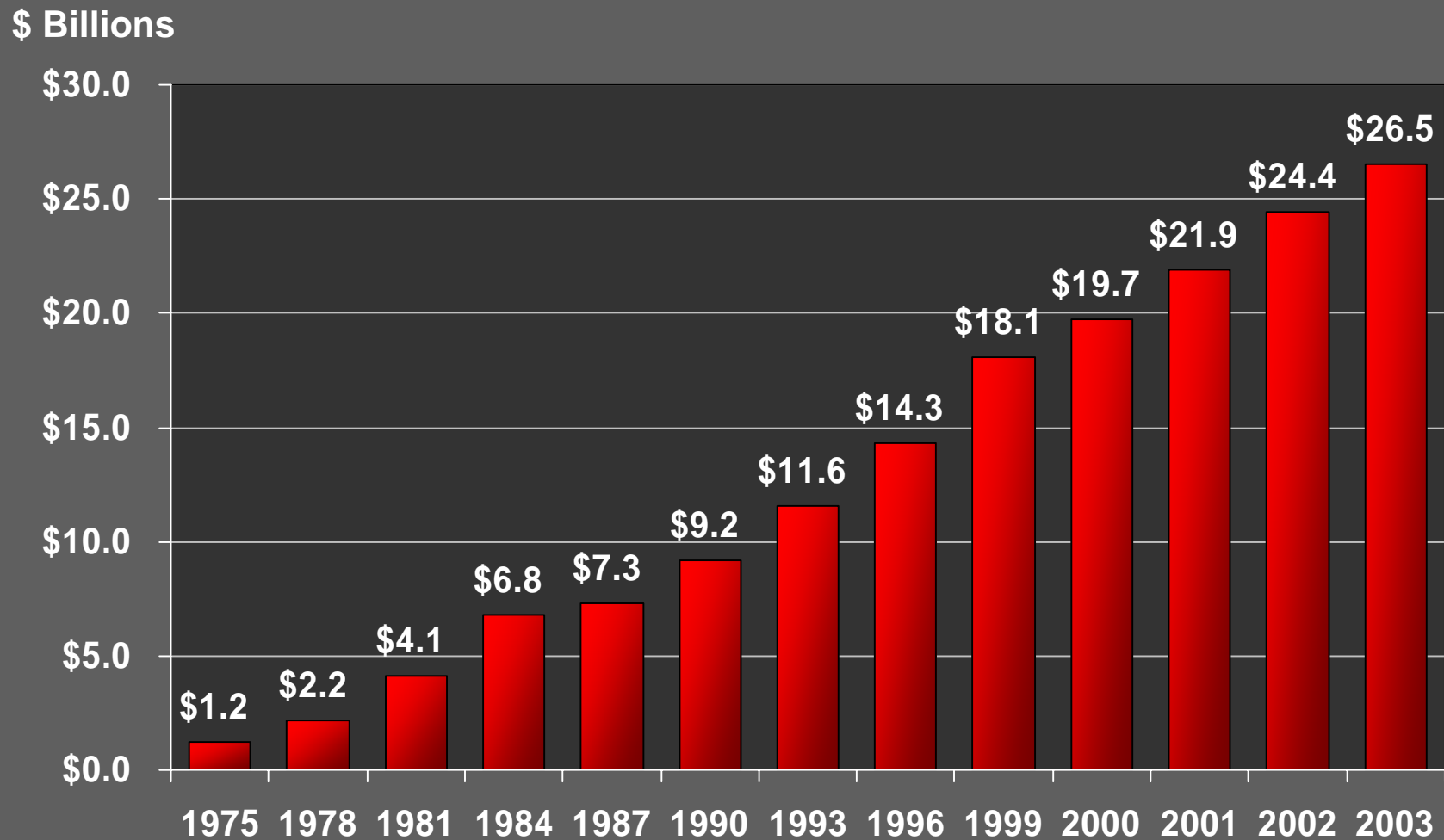
Millions

Award Means



Source: Medical Liability Monitor

Medical Malpractice: Tort Cost Growth is Skyrocketing



Impact of Rising Premiums: More Examples



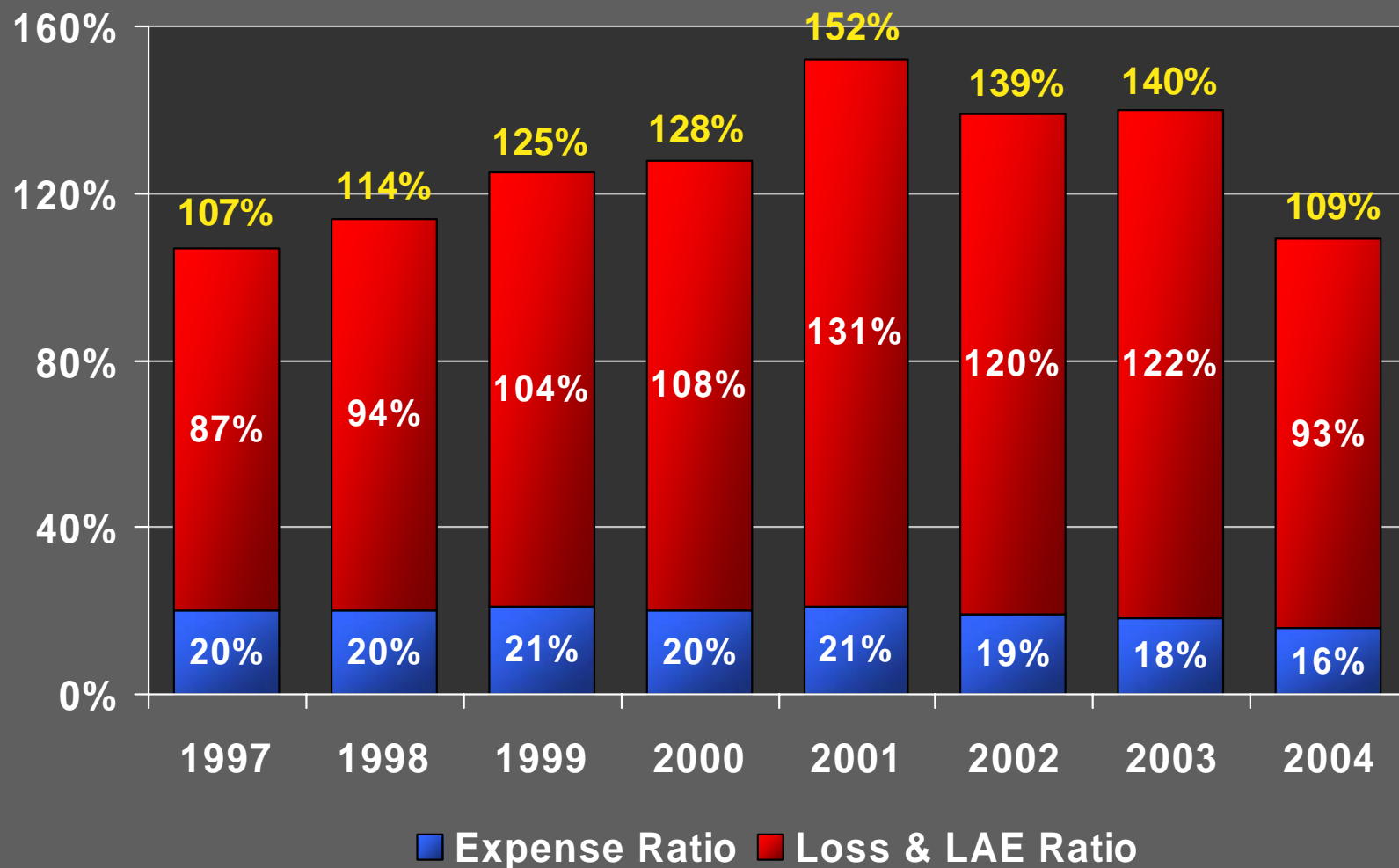
- New meaning of high risk: *specialties* instead of patients
- ACOG issues **Red Alert** for 23 states where medical liability insurance crisis threatens access to obstetrical care.
 - **35%** of ObGyn residency slots are unfilled
- *Applications* to medical schools declined for 6 straight years while law and business school applications have increased 20-60%

What Drives the Cost of Malpractice Insurance?

Definition

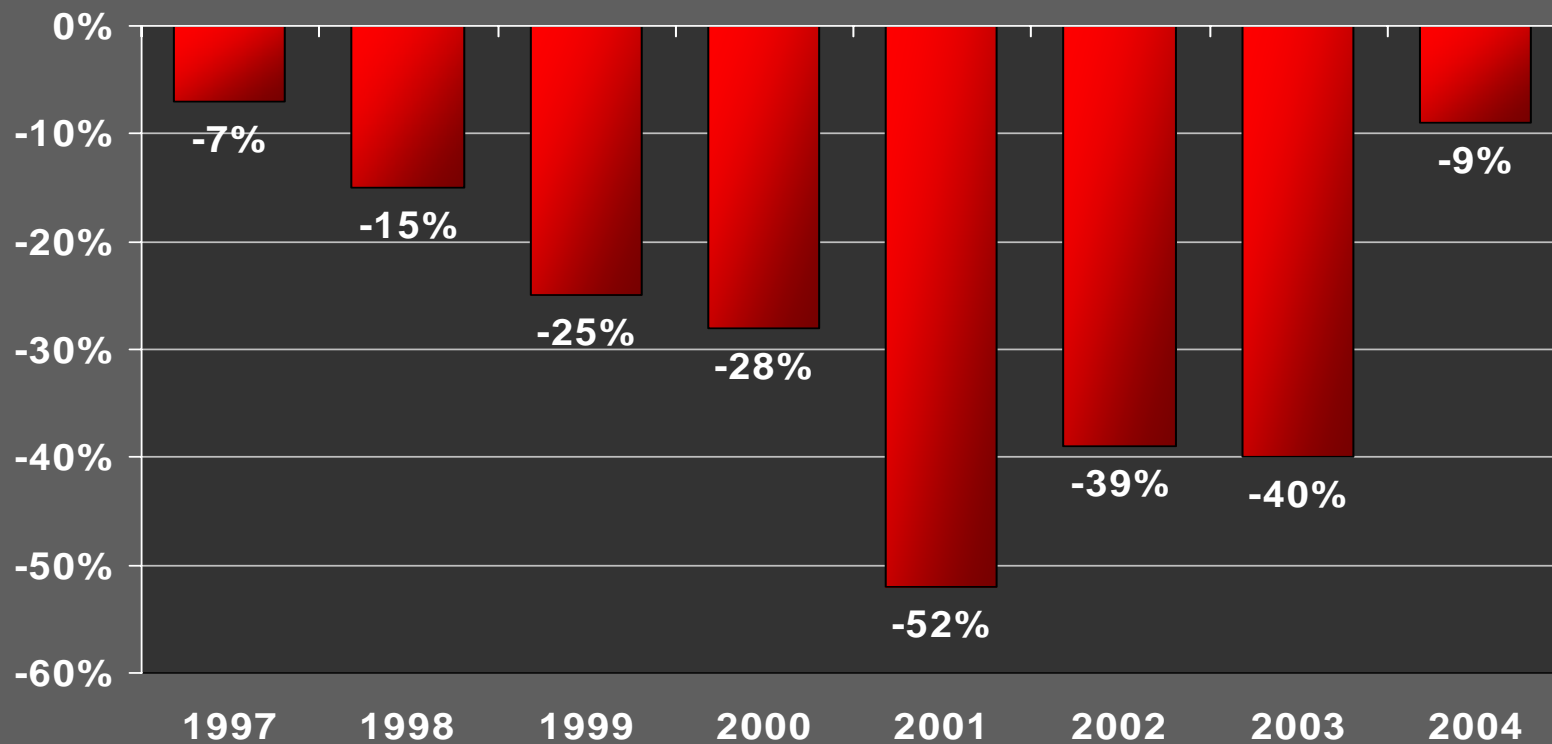
- Combined Ratio = Loss Ratio +
Expense Ratio

Industry Aggregate Medical Malpractice Net Loss and Expense Ratios



Source: Insurance Expense Exhibit from Highline Data Services

Industry Aggregate Medical Malpractice Net Underwriting Profit Ratios

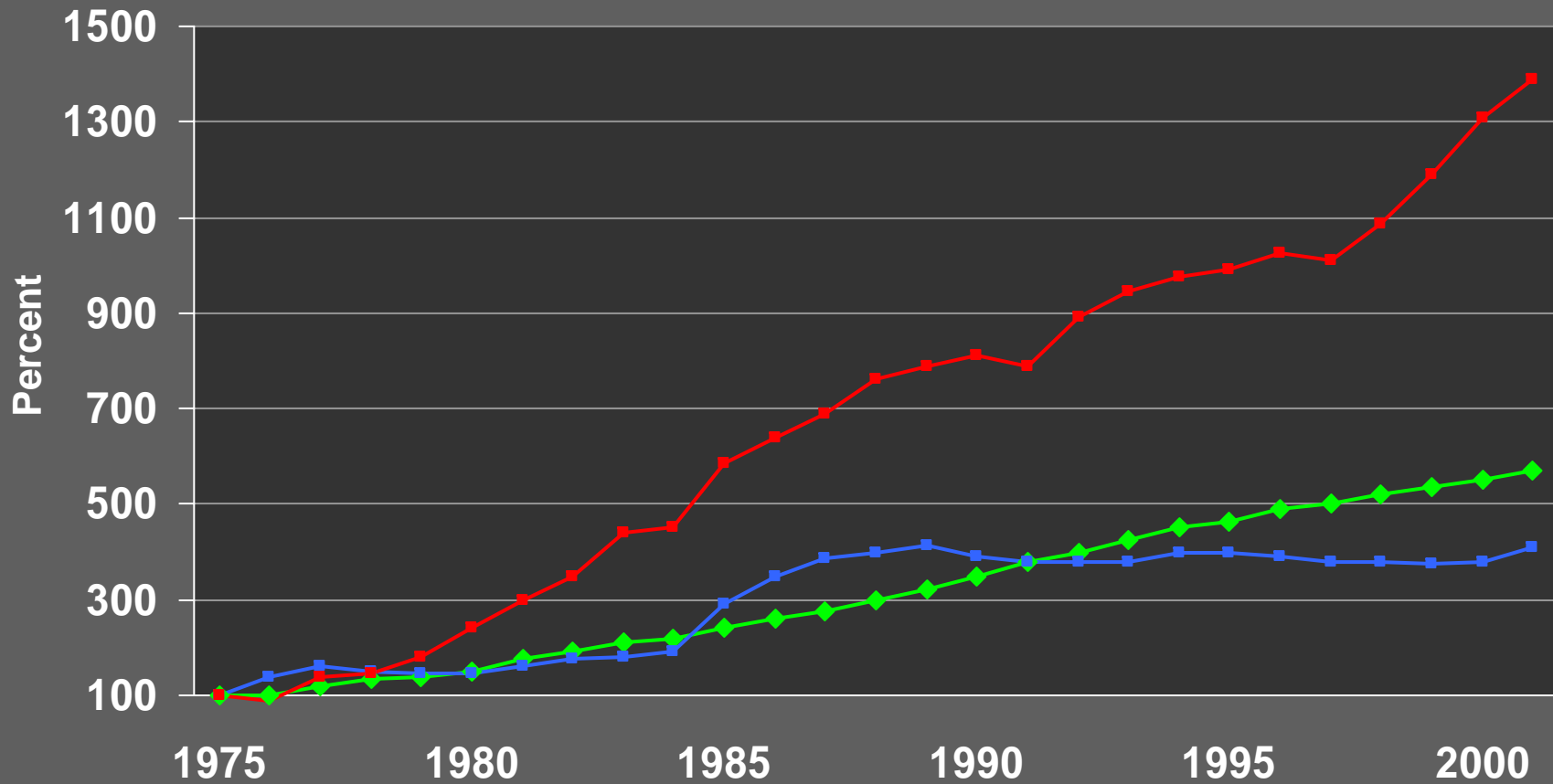


Source: Insurance Expense Exhibit from Highline Data Services

Inflation and Per Doctor Premiums and Losses



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



Source: Brown Brothers Harriman

***Do We Need Medical
Liability Reform?***

Do We 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 it is wrong that 15-20% of America's doctors face malpractice litigation every year
 - Or a third of plastic surgeons, OBs, ER physicians and trauma surgeons, and orthopedists
 - Or half of all neurosurgeons

Do We Need Medical Liability Reform?



- **Yes**, if you believe access to care is important for all Americans
 - Or if you believe it is better to have your child delivered by an OBGyn in an accredited hospital than a highway patrolman in the back of a squad car
 - Or if you believe that being rushed to the nearest trauma center shouldn't involve helicoptering across state borders
- **Yes**, if you believe it is wrong for 90% of America's doctors to practice defensive medicine

Do We Need Medical Liability Reform?



Yes, if you believe we need:

- **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** money is available at the time it is needed.

OK, But Does it Work?

MICRA Works

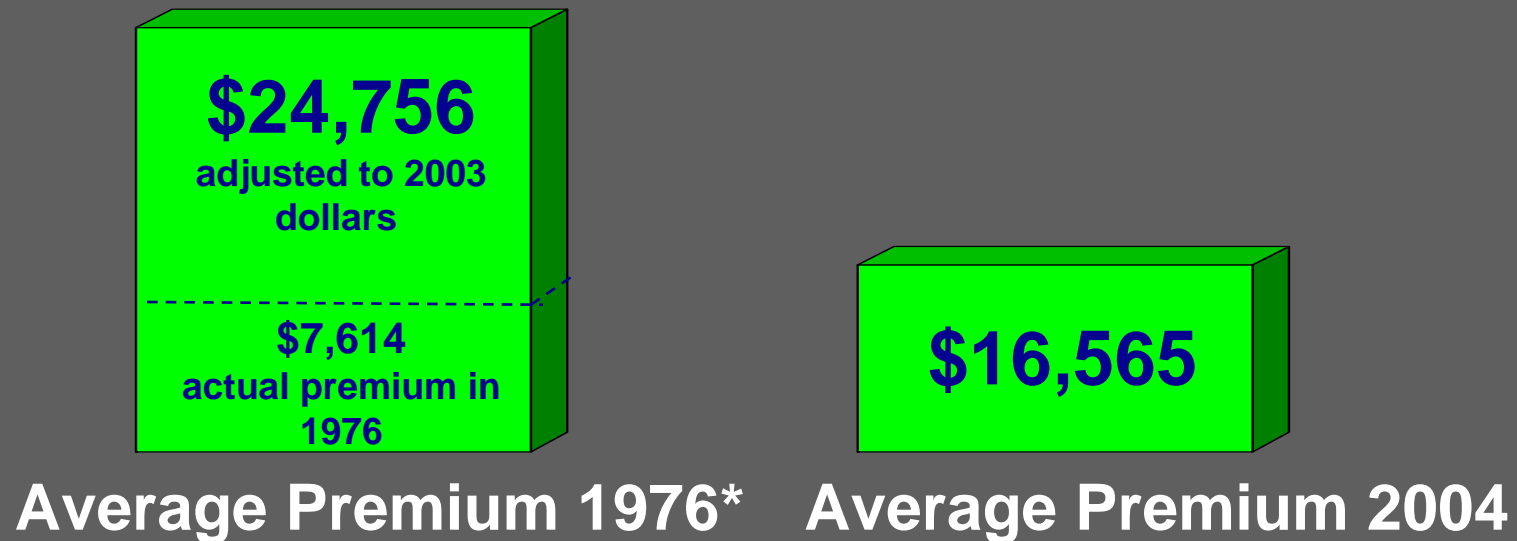


- 1. Mandates a \$250,000 cap on noneconomic damages ONLY.
- 2. Allows introduction into evidence of collateral sources of payment.
- 3. Allows periodic payments of future damages.
- 4. Provides for a sliding scale limit on attorneys' contingency fees.

MICRA Helps Reduce California Medical Liability Premium Rates by 33%



The Doctors' Company 1976-2004

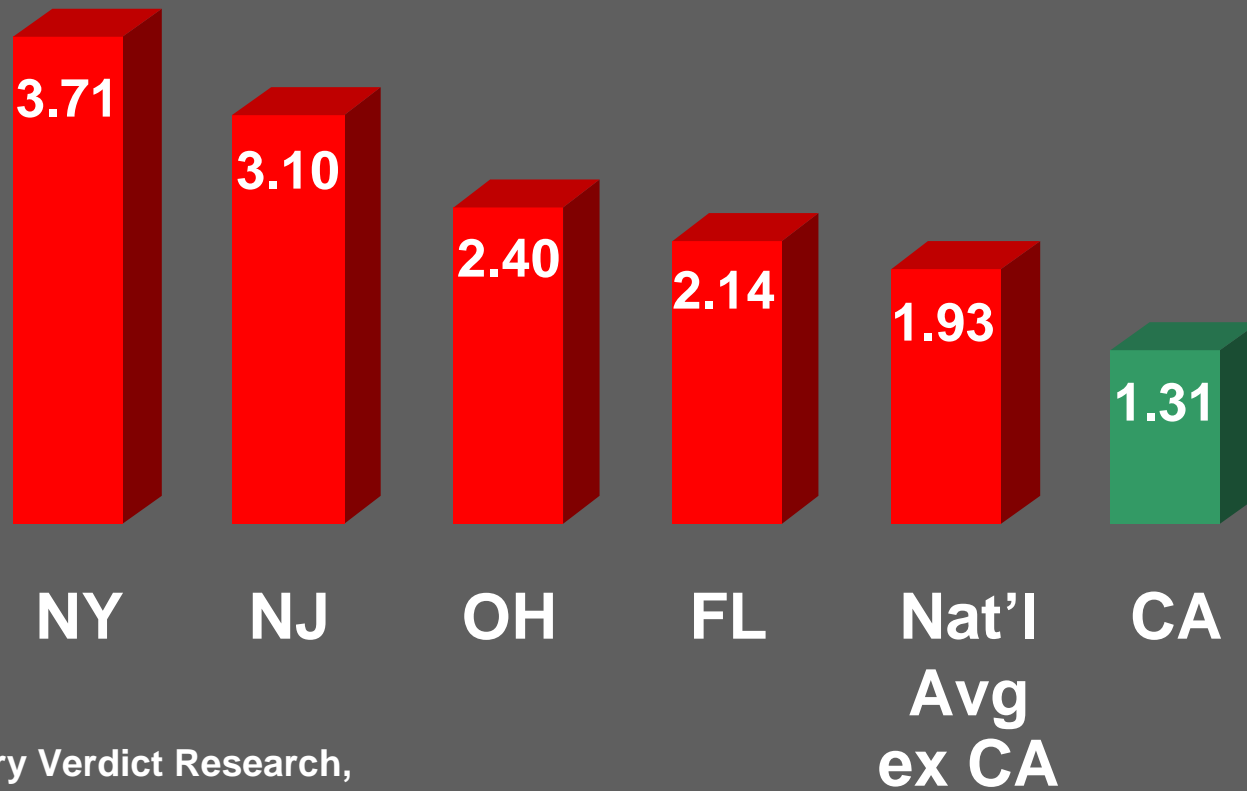


* \$7,614 average premium adjusted to 2003 dollars based on the Average Consumer Price Index for a \$1 Million/ \$3 Million Claims-Made Policy Premium

MICRA Reduces Verdict Cost and Frequency

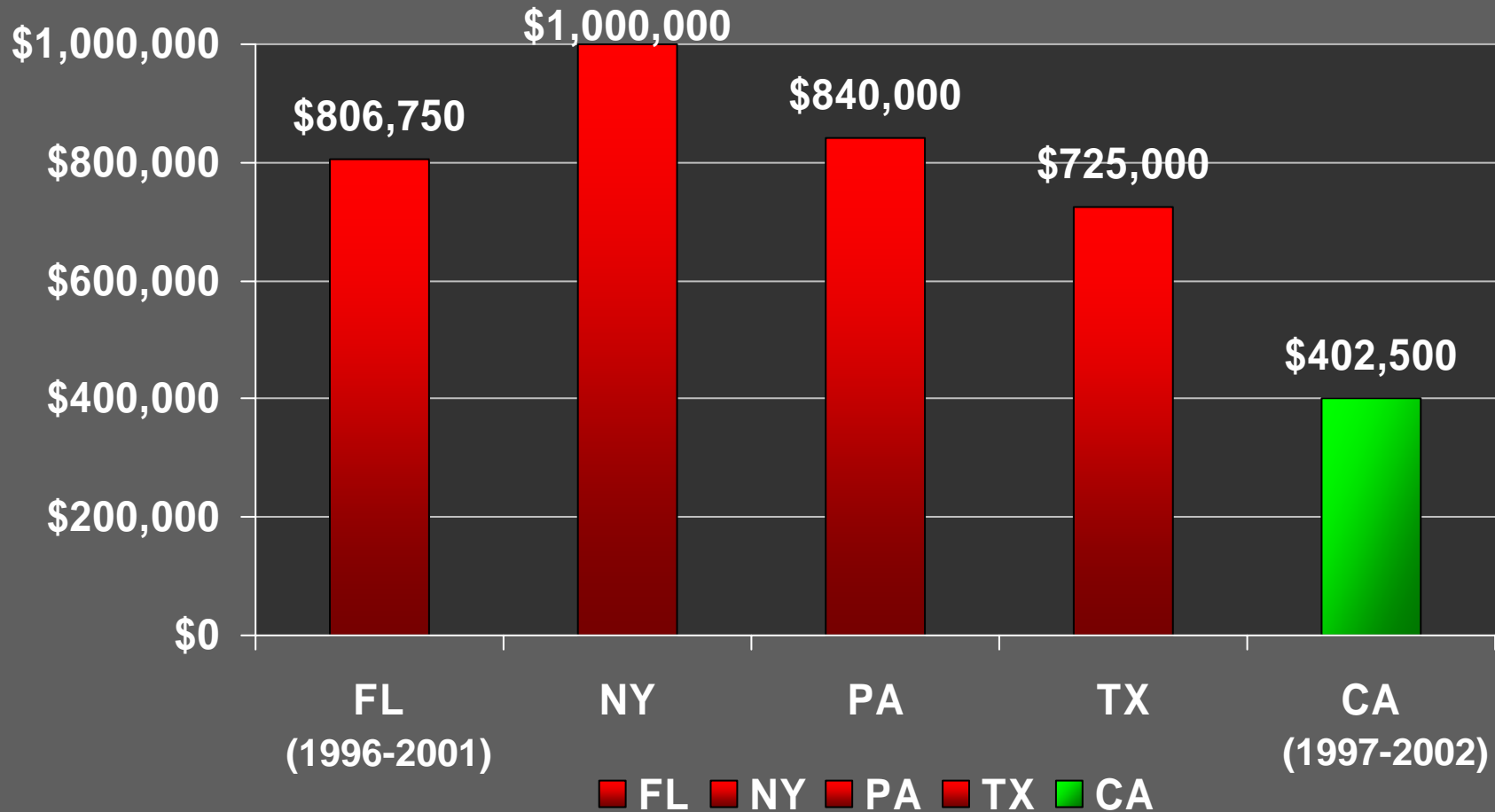


\$1 Million+ Verdicts Per 1,000 Doctors



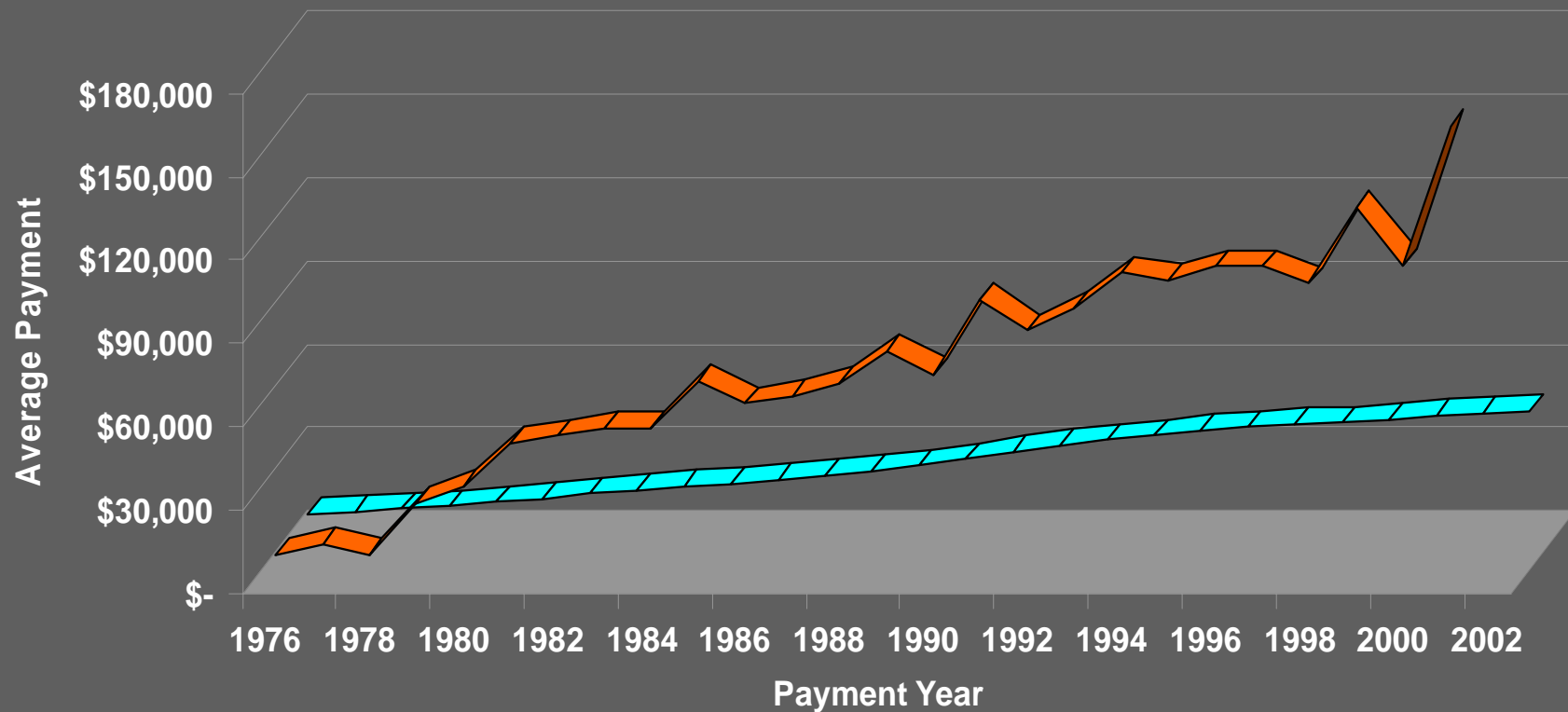
Sources: Jury Verdict Research,
AMA



MICRA: Median Med Mal Jury Awards 1996-2002



Source: Jury Verdict Research

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

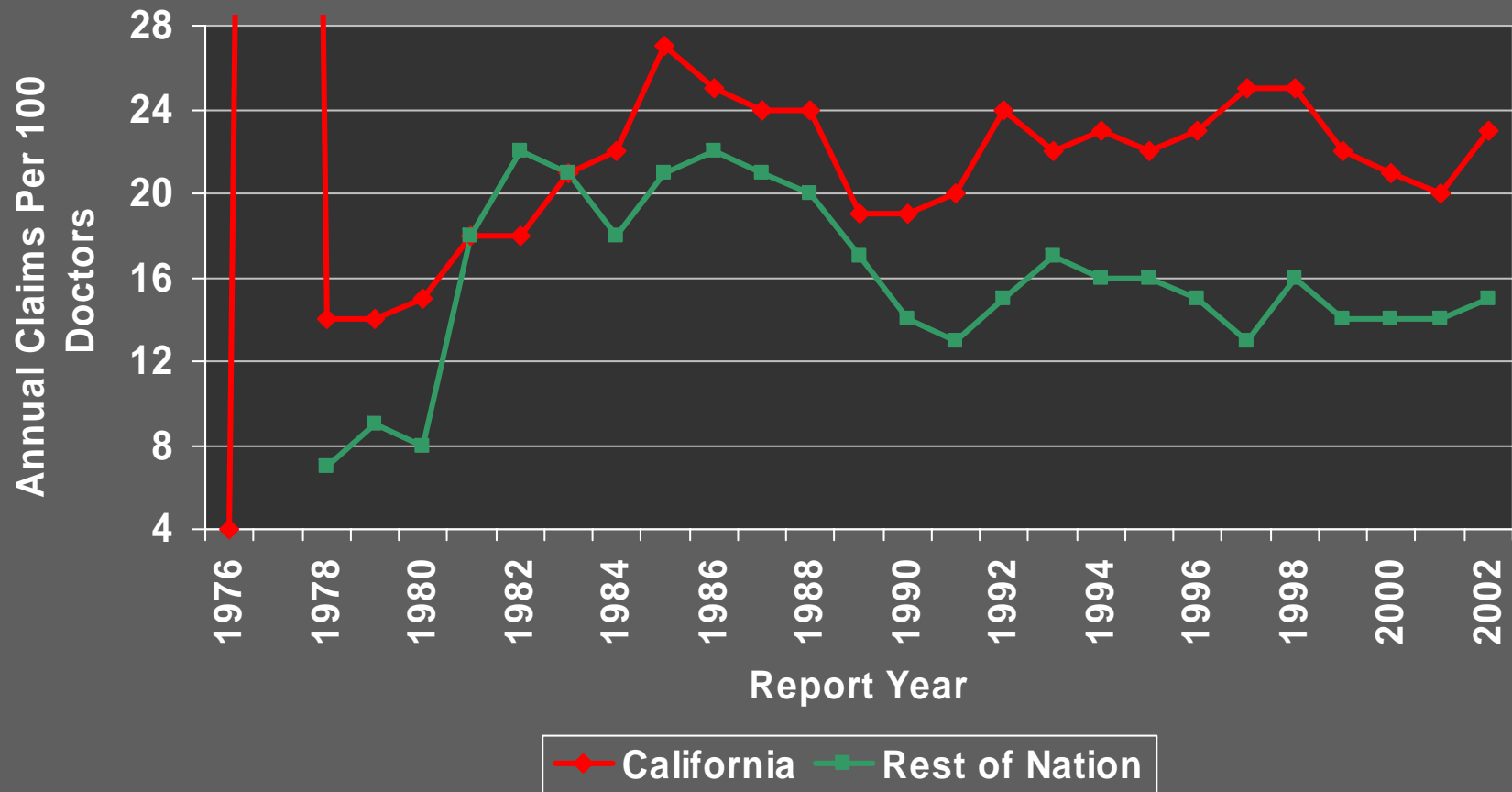


-  Actual average physician medical liability claim paid in CA 1976-2001.
-  Average medical liability claim in CA beginning 1976, adjusted for rate of inflation (CPI) 1976-2001.

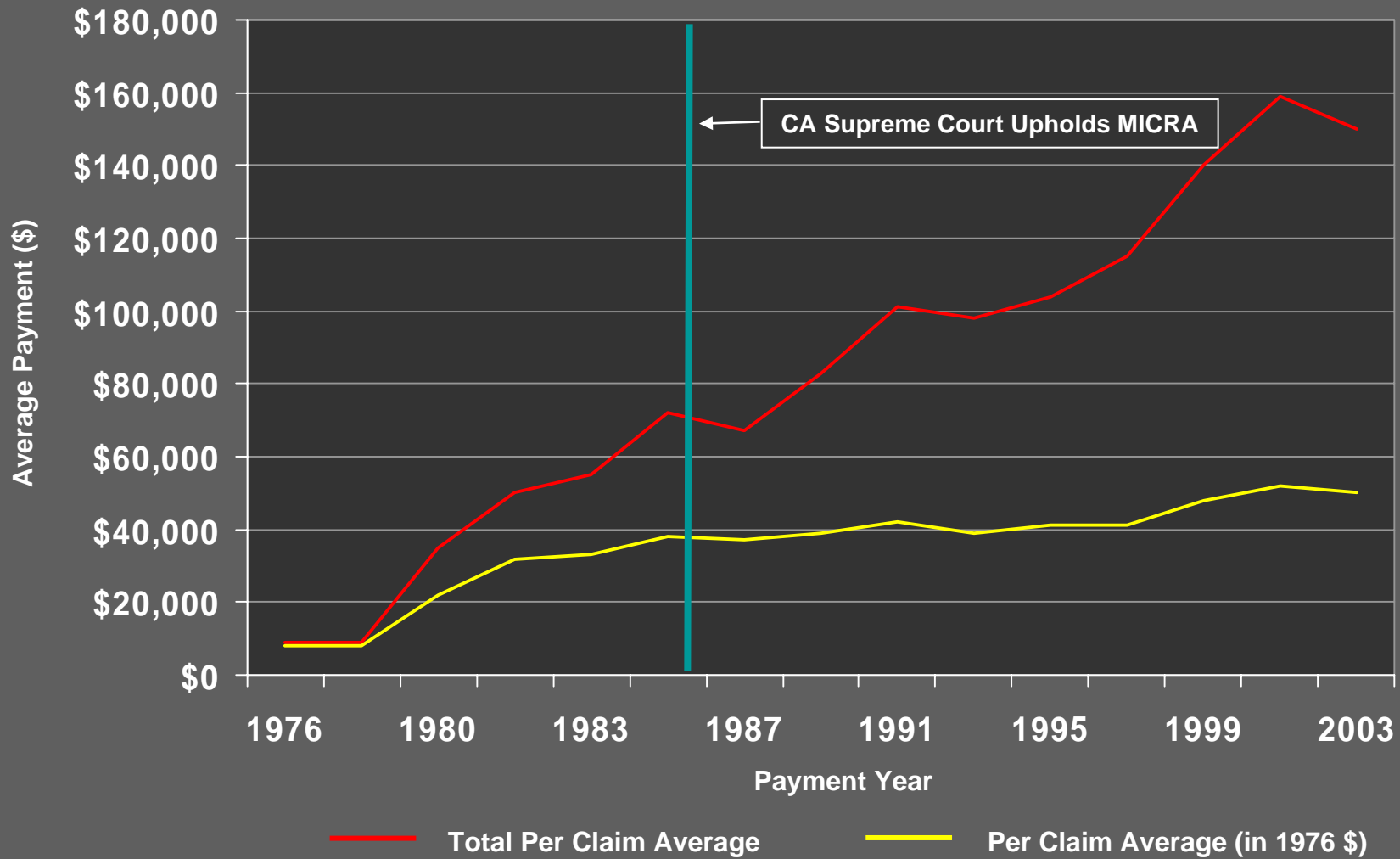
MICRA Does Not Limit Access to Courts



TDC Physician Claim Frequency

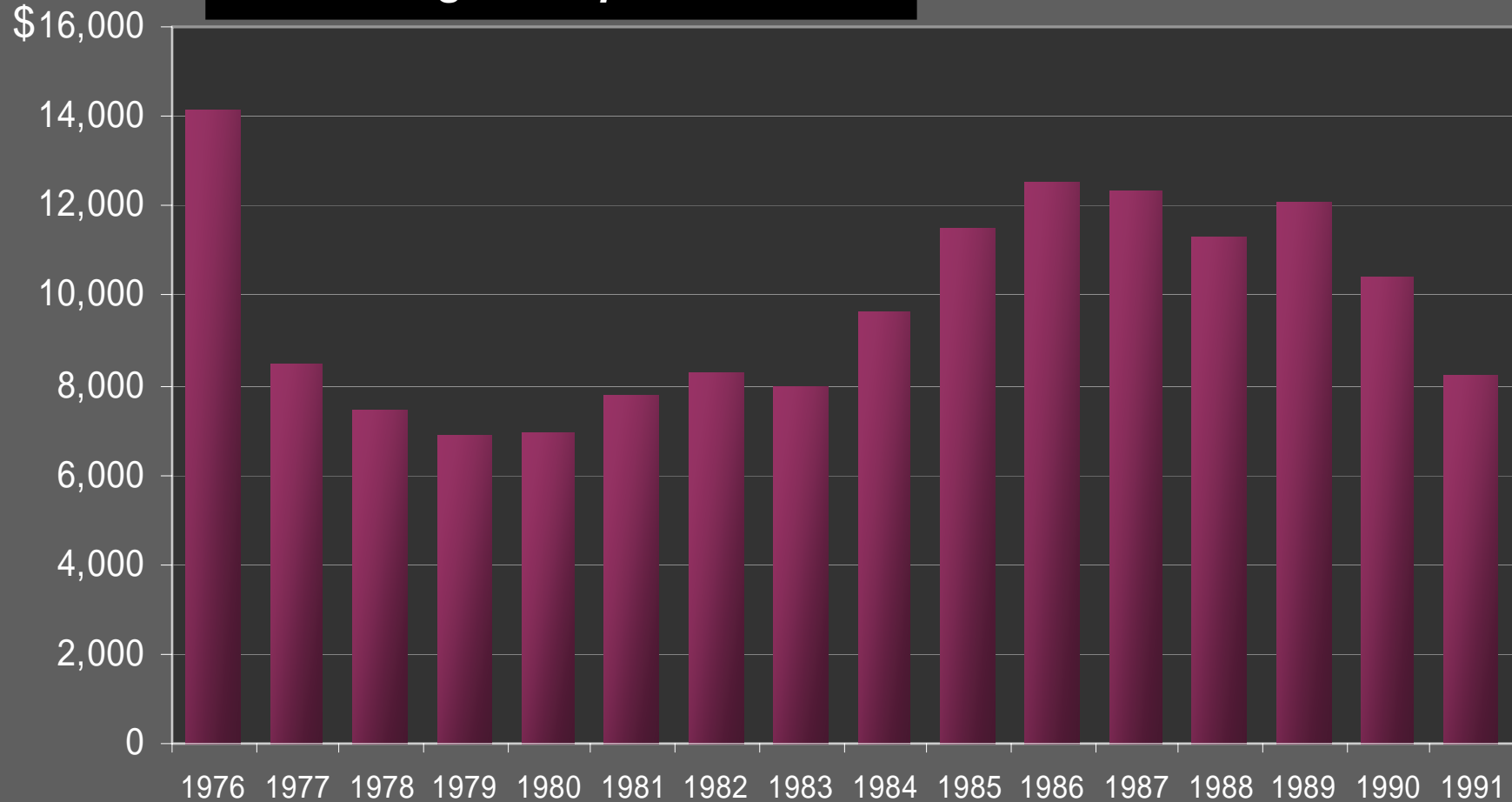


Increasing Cost of Malpractice Claims Despite MICRA



MICRA's Dramatic Effect

TDC Average Rate per Doctor



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

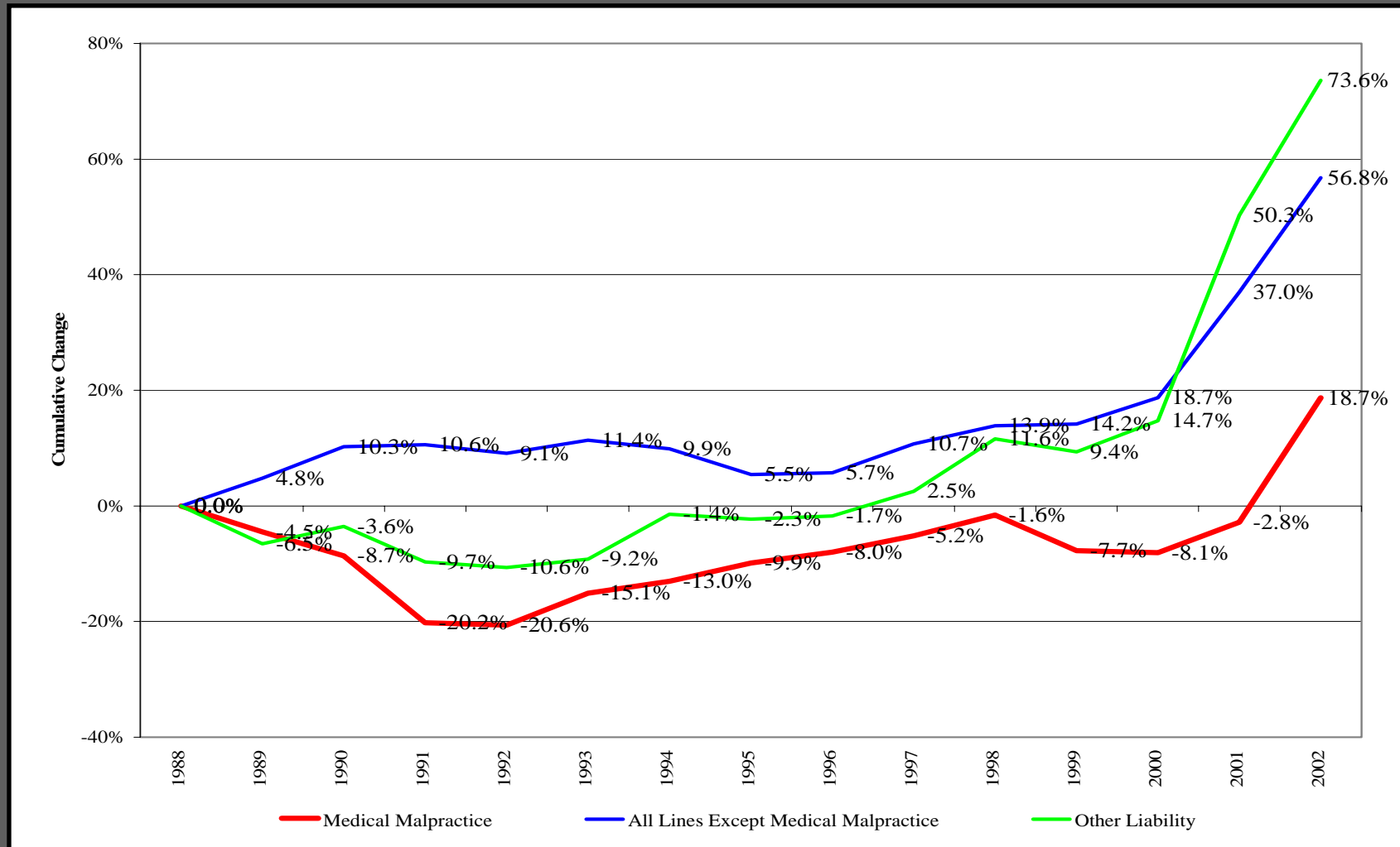


- After 30 years of legal assault on the medical profession, what have we to show for it?
- Would we tolerate a policeman who made false arrests 80% of the time, or a prosecutor who went after the innocent 80% of the time?

Conclusions

- *Yes, we need medical liability reform.*
- *We know beyond the shadow of a reasonable doubt, that real reforms work extremely well.*

Prop 103 and Medical Malpractice Rates



Stanford Study: The Cost of Defensive Medicine



- States with effective tort reform lower health care costs 5-9%.
- Savings nationally would be \$50 billion.
- HHS estimates savings as high as **\$110** billion.



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**