

CPCU All-Industry Day

Medical Malpractice

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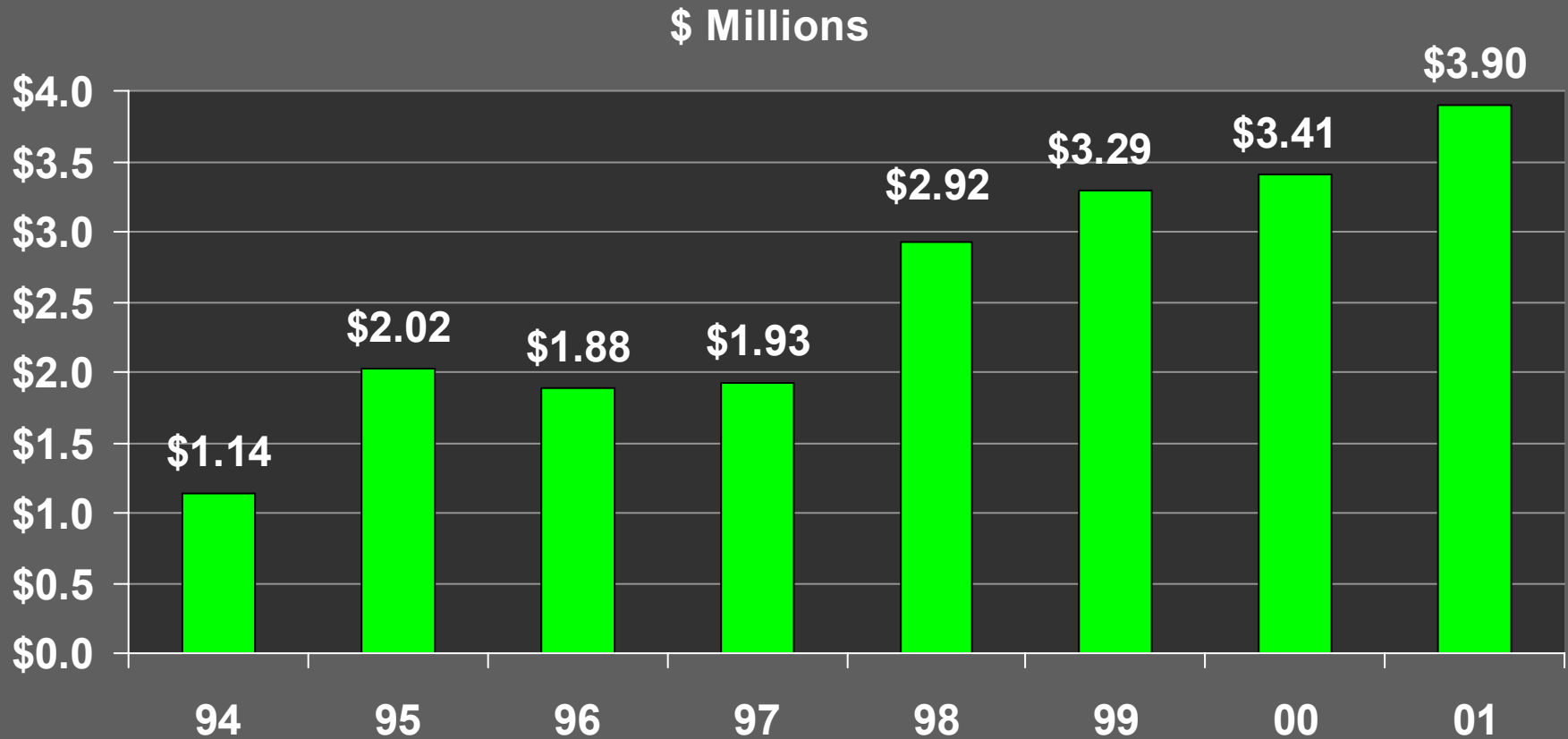
Introduction

- What are the **root causes** of the increase in medical liability costs?
- What is the **socioeconomic** impact?
- Do we have a serious **epidemic** of preventable medical error?
- Doesn't the tort system encourage advances in risk management and **patient safety**?
- Why do tort reform advocates refer to "**frivolous**" **claims** as one of the causes of rising costs? What is "frivolous" about a patient who is injured because of medical malpractice?
- Does a small percentage of "**bad doctors**" cause the lion's share of physician losses?
- Plaintiff attorneys say the problem is not too much litigation but **too much malpractice**. How would you respond to this argument?
- We are hearing a loud outcry from doctors, but little from **hospitals**. Why?
- Is tort reform a **federal** or state issue?

Root Causes

- Increasing cost of claims
- Incredibly large number of nonmeritorious claims
- Rising costs of defense
 - More than 50% of premium dollars are consumed by attorneys
- Reduction in investment subsidies

Average Jury Award in Medical Malpractice Cases

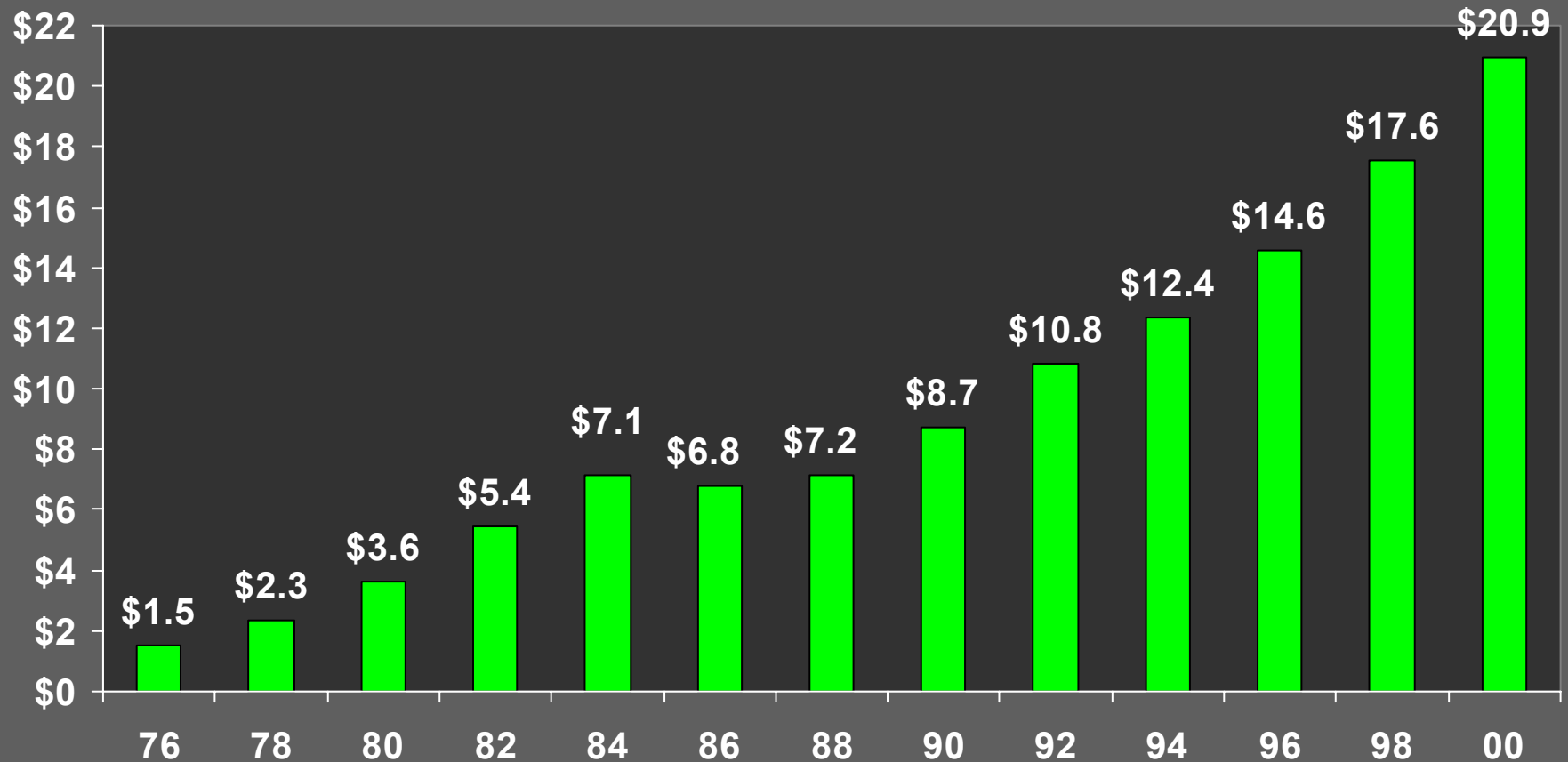


Source: Jury Verdict Research; Insurance Information Institute.

Medical Malpractice: Tort Cost Growth is Skyrocketing



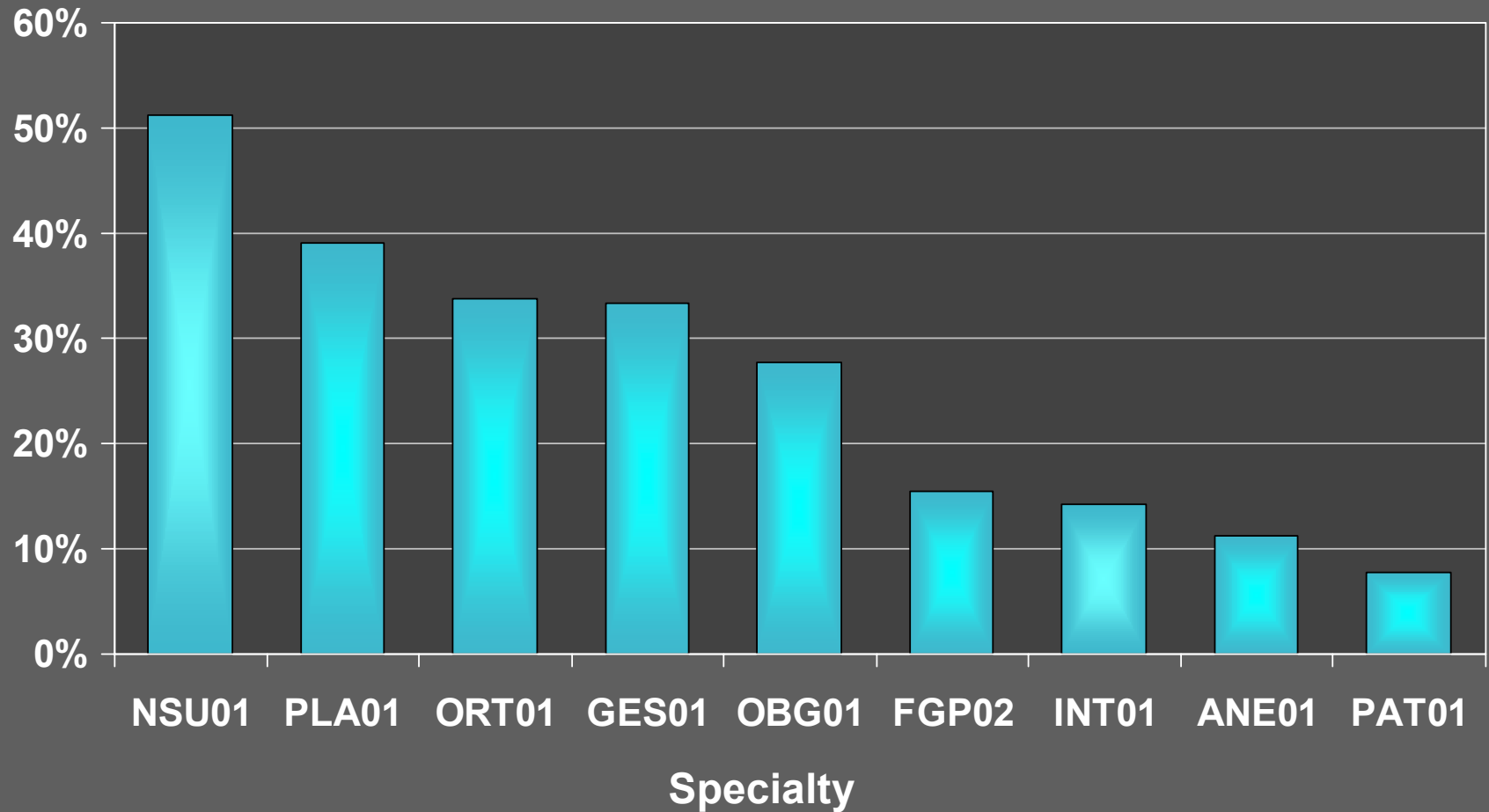
\$ Billions



Frequency by Specialty 1995-2003



Frequency



Frequency

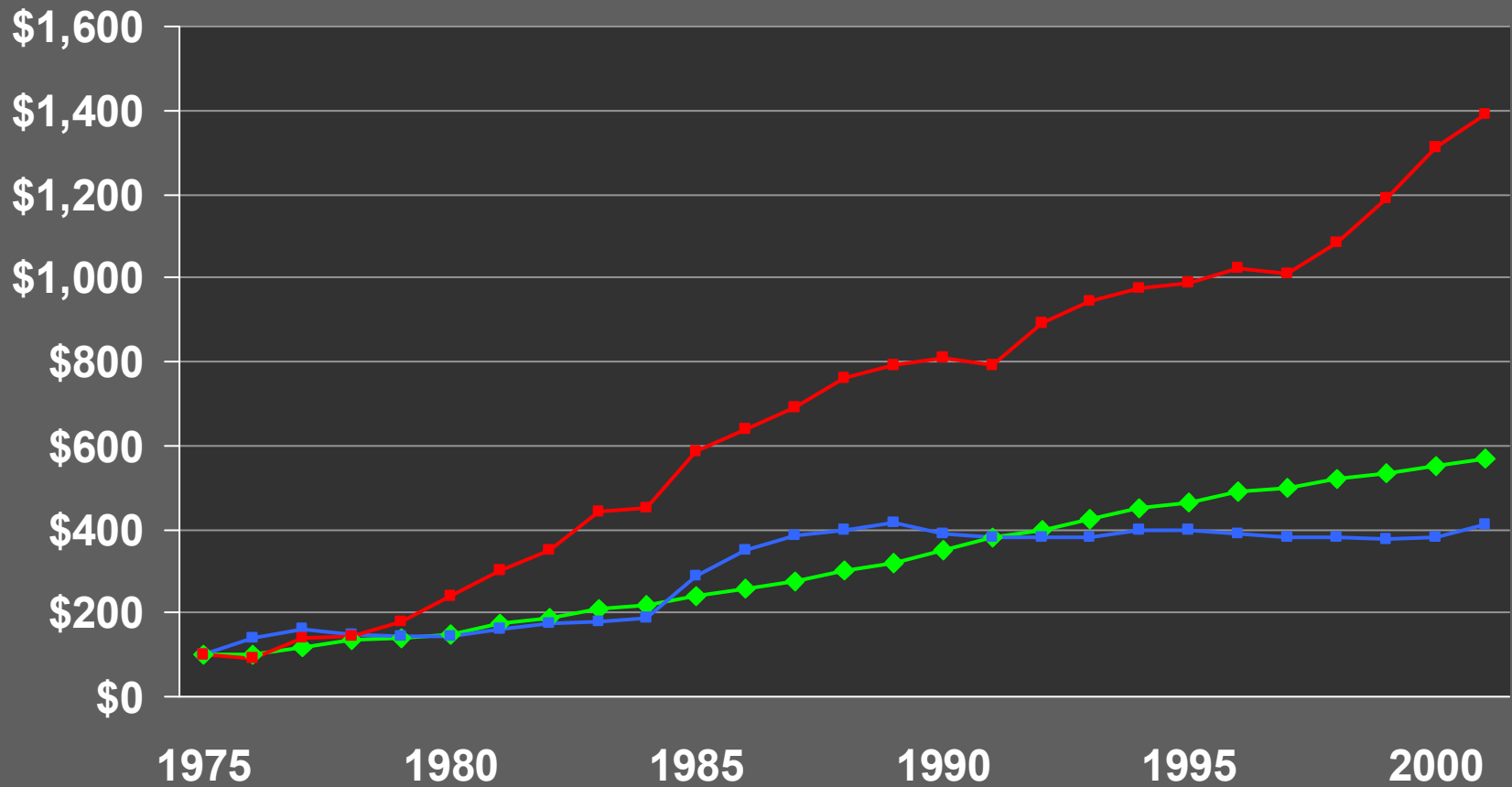
Meaning

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

Inflation and Per Doctor Premiums and Losses



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



Source: Brown Brothers Harriman

How Big a Problem Are Frivolous Claims?

- Define frivolous
- About contingency fees

Epidemic of Malpractice?

- Epidemic of bad litigation

The “Bad Doctor” Fallacy



- 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.

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?
- If a policeman made false arrests 80% of the time, or a prosecutor went after the innocent 80% of the time, would you say that is helpful in assuring a civil society?

Impact of Rising Premiums

- The helicopter that takes you to the nearest trauma center may be landing in the next state
- ACOG issues **Red Alert** for 23 states where medical liability insurance crisis threatens access to obstetrical care.
 - 35% of ObGyn residency slots are unfilled
- Many areas lack any neurosurgical coverage at all.
- Applications to medical schools declined for 6 straight years while law and business school applications have increased 20-60%
- New meaning of high risk: patients, not specialties.

Federal or State Problem?

- Federal government pays for 45% of all healthcare.
- Mobile society
 - Family members across country
- National standards of care
- Failure of the states
 - No constitutional impediments

Harvard, IOM, and Patient Safety

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

- Numerators and denominators

- *The cause of the crisis in medical malpractice insurance is too many non-meritorious claims coupled with a dramatic increase in the cost of the relatively few successful claims.*