Malpractice Crisis of 2002-2003

AANS

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San Diego
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Context

- Loss of capacity
- Rapidly increasing severity
- Reinsurance costs rising
- Harvard, IOM, and the concept of medical error

Cost of coverage
Trail lawyer disinformation

*Tort reform*
<table>
<thead>
<tr>
<th>No.</th>
<th>Company Name</th>
<th>Status/Type</th>
</tr>
</thead>
<tbody>
<tr>
<td>1.</td>
<td>American Physicians Assurance</td>
<td>Withdrew from FL</td>
</tr>
<tr>
<td>2.</td>
<td>Associated Physicians Insurance Co</td>
<td>Insolvent</td>
</tr>
<tr>
<td>3.</td>
<td>Caduceus Trust</td>
<td>Financial distress merger</td>
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<tr>
<td>4.</td>
<td>Clarendon National</td>
<td>Withdrew from line of business</td>
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<tr>
<td>5.</td>
<td>CNA Re of London</td>
<td>Ceased operations</td>
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<td>6.</td>
<td>Farmers Insurance</td>
<td>Withdrew from FL</td>
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<td>7.</td>
<td>Reciprocal of America</td>
<td>Taken over by VA DOI</td>
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<tr>
<td>8.</td>
<td>Frontier</td>
<td>Withdrew from line of business</td>
</tr>
<tr>
<td>9.</td>
<td>Insurance Corp of America</td>
<td>Insolvent</td>
</tr>
<tr>
<td>10.</td>
<td>Legion</td>
<td>Insolvent</td>
</tr>
<tr>
<td>11.</td>
<td>Lloyd’s Syndicates 376, 991, 1007</td>
<td>Ceased operations, placed in runoff</td>
</tr>
<tr>
<td>12.</td>
<td>MAG Mutual</td>
<td>Withdrew from hospitals</td>
</tr>
</tbody>
</table>
25 Companies Recently Exiting Underwriting Medmal Insurance

13. MIIX – Ceased operations, placed in runoff
14. MMI – Financial distress merger
15. PHICO – Insolvent
16. PIE Mutual – Insolvent
17. Princeton – Withdrew from medmal in PA
18. Professional Medical – Insolvent
19. Reliance – Insolvent
20. Safeco – Withdrew from physician business
21. SCOR Re – Withdrew from line of business
22. Swiss Re – Withdrew from line of business
24. UnionAmerica – Ceased operations, placed in runoff
25. Zurich – Withdrew from physicians, except in select circumstances
Frequency by Specialty
1995-2001

Frequency

Specialty

NSU01 PLA01 ORT01 GES01 OBG01 FGP02 INT01 ANE01 PAT01

0% 10% 20% 30% 40% 50% 60%
Specialty Relativity Nationwide

- Neurosurgery: 6.51
- Obstetrics & Gynecology: 4.37
- Plastic Surgery (With Breast Implants): 2.32
- General Surgery: 3.90
- Orthopedic Surgery: 2.97
- Family/General Practice (Minor Surgery/No Obstetrics): 1.08
- Internal Medicine: 1.00
- Anesthesiology: 1.07
- Pathology: 1.00
Top Jury Awards of 2002

Philip Morris
Medication Dilution
Gas Explosion
Truck Roll
Philip Morris
Headon Collision
Investment Firms
Cerebral Palsy
Cerebral Palsy
Cerebral Palsy
Cerebral Palsy
Car Accident

$0  $50  $100  $150  $200  $250  $300

Millions
Top Jury Awards of 2002

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- Medication Dilution
- Gas Explosion
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- Cerebral Palsy
- Cerebral Palsy
- Car Accident

Millions

$0 $4,000 $8,000 $12,000 $16,000 $20,000 $24,000 $28,000

Millions
Severity: National Medians

National Jury Award and Settlement Medians for Medical Malpractice Cases

Source: Jury Verdict Research
Severity – Distribution of Claims by Size of Indemnity

Distribution of Claims by Size of Indemnity By Closing Year

<table>
<thead>
<tr>
<th>Size of Indemnity</th>
<th>Percentage of Closed Claims</th>
</tr>
</thead>
<tbody>
<tr>
<td>&gt;=500k, &lt;1mill</td>
<td>8%</td>
</tr>
<tr>
<td>&gt;=1mill</td>
<td>10%</td>
</tr>
</tbody>
</table>

Legend:
- 1996
- 1999
- 2002
Large Claims Analysis

Total number of claims 1998-2002: 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

Total paid claims 1998-2002: 3,307
- 4.2% (140) paid $1 million or more, 28.5% of paid indemnity
- 11.4% (378) paid $500,000 or more, 55.4% of paid indemnity
**Specialty Comparison**

**Specialties with Highest Percentage Cases >$1 Million**

<table>
<thead>
<tr>
<th></th>
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</thead>
<tbody>
<tr>
<td>Neurology</td>
<td>4.8%</td>
<td>14.8%</td>
</tr>
<tr>
<td>Anesthesiology</td>
<td>4.0%</td>
<td>12.4%</td>
</tr>
<tr>
<td>Ob/Gyn</td>
<td>3.9%</td>
<td>11.9%</td>
</tr>
<tr>
<td>Pediatrics</td>
<td>2.6%</td>
<td>9.3%</td>
</tr>
<tr>
<td>Emergency Med</td>
<td>2.4%</td>
<td>9.0%</td>
</tr>
</tbody>
</table>

PIAA Claim Trend Analysis  2001
An Equitable System?

Fewer than 100 claims per year account for more than half the total indemnity paid on behalf of our 28,000 physicians.
Increasing Severity

Dissatisfaction with medicine
- Managed care
- High-tech care
- IOM Study

Value of money

Risk-free society

Incomprehensibly large judgments in other areas
• 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

- Did not distinguish between major and minor events
- Did not distinguish events under physician control
- 30-fold variation among venues and specialties
Harvard Study

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

• No correlation whatever between the presence or absence of medical negligence and outcome of malpractice litigation
Costs of Coverage
Reinsurance

September 11
Effect is inversely proportional to the size of the insurance company
Average Rate Increases

Medical Liability Monitor

Int Med  Gen Surg  OBGYN

2000  2001  2002

0%  5%  10%  15%  20%  25%
Neurosurgical Rates Across the Country (TDI)
Plaintiff Bar
Trial Balloons and Myths
• It’s just about the few bad doctors.
• It’s about insurance companies’ bad investments.
• It’s about insurance companies not charging enough (sic).
• It’s not about MICRA, it’s about Prop. 103.
• Claims losses don’t matter.
• Commendably, used to subsidize premium levels in relation to claims losses.
• No malpractice insurer has ever had negative investment income.
• Malpractice insurers average less than 10% of assets in equities.
The Proposition 103 Myth

MICRA 1975, final constitutional challenge 1985
Prop. 103 approved 1989, final court challenge 1993

• Med mal hearings 1991
• TDC had been paying dividends for 11 years prior to its 103 dividend.
• TDC dividends were higher in the 5 years prior to 103 than they were in the 5 years after.
The Proposition 103 Myth

- The med mal insurers were specifically exempted from rate rollbacks.
- There has not been a single med mal rate increase denied under 103.
Underwriting Results 1991-2000

Source: 2000 NAIC Profitability Report

Texas State Senate Prompt Payment Committee, August 15, 2002
Financial Markets

Bond markets
- Falling interest rates decrease investment income

Stock market
- Less than 10% of assets

Era of subsidies is over
- Alternative: insolvency
Tort Reform
“Your Honor, we need more time to prepare to make a mockery of the law.”
MICRA Helps Reduce California Medical Liability Premium Rates by 40%

The Doctors’ Company
1976-2001

Average Premium 1976*  Average Premium 2001

$23,698
adjusted to 2001 dollars

$7,614
actual premium in 1976

$14,107

* $7,614 average premium adjusted to 2001 dollars on the Annual Urban CPI Index for a $1 Million/ $3 Million Claims-Made Policy Premium
$1 Million+ Verdicts Per 1,000 Doctors

NY: 3.71
NJ: 3.10
OH: 2.40
FL: 2.14
Nat’l Avg ex CA: 1.93
CA: 1.31

Sources: Jury Verdict Research, AMA
MICRA Reduces Average Time to Settlement

- California: 1.8 years
- States with No Noneconomic Caps: 2.4 years

33% Longer

*Indemnity payments only
Injured Patients Benefit Directly

Proceeds of a $1 Million Judgment

- With MICRA: $800,000
- Without MICRA: $200,000
Average Medical Liability Claim in CA vs. Average Claim Adjusted for Inflation 1976-2001

MICRA Does Not Limit Access to Courts

TDC PHYSICIAN CLAIM FREQUENCY

Annual Claims Per Mature Internal Med. Equivalent Doctor

Report Year


California Rest of Nation
Oregon: Loss of Tort Reform

Millions

$70

$60

$50

$40

$30

$20

$10

$0

1998 1999 Lost Tort Reform 2000
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.
MICRA Works

- CA: 27-year experience
- Congressional Budget Office
- American Academy of Actuaries
- Florida Governor’s Select Task Force
  - “The primary cause of increased medical malpractice premiums has been the substantial increase in loss payments…”
  - $250,000 cap
    - “…will bring relief to this current crisis”
    - “…a cap of $250,000 per incident will lead to significantly lower malpractice premiums.”
MICRA Works

• “...there is no other alternative remedy that will immediately alleviate Florida’s crisis…”
• “Without the inclusion of a cap on potential awards of non-economic damages in a legislative package, no legislative reform plan can be successful in achieving the goal of controlling increases in healthcare costs, and thereby promoting improved access to healthcare”
“If society wishes to have unlimited judgments, then insurance companies will be required to charge unlimited premiums. Unlimited medical malpractice premiums mean unlimited increases in the cost of healthcare. Unlimited increases in the cost of healthcare mean decreased access to healthcare. Limitations of access inevitably affect the most vulnerable members of our society.”
California Issues Despite MICRA

Frequency remains extraordinarily high.

- Risk of a suit against even a claims free doctor remains high.
- Cost of defending average non-meritorious claim: $25,000
- Cost of defense verdict: $80-100,000
- Investment subsidies significantly lower
- For past 27 years, the plaintiff’s bar has attempted to nullify MICRA by amendment in the legislature or through new case law.
Summary

- Exposure is greater.
- Financial market subsidies have ended.
- Capacity is shrinking and reinsurance is more expensive.
- Every practicing physician is a potential target.
- We know, we do not speculate, real tort reforms work.
Summary

• If society wishes to have astronomical indemnities, it must accept astronomical premiums, and astronomical health care costs.
“I don’t feel quite as fulfilled when I save a lawyer.”