The Crisis of 2002-2003
American College of Physicians
April 5, 2003

Richard E. Anderson, M.D., F.A.C.P.
Chairman, The Doctors Company
“Let me through. I’m a lawyer.”
Context
  • Loss of capacity
  • Rapidly increasing severity
  • Reinsurance costs rising
  • Harvard, IOM, and the concept of medical error

Internal medicine claims
Cost of coverage
Financial markets
  • Truth and consequences

_Tort reform_
25 Companies Recently Exiting Underwriting Medmal Insurance

1. American Physicians Assurance – Withdrew from FL
2. Associated Physicians Insurance Co – Insolvent
3. Caduceus Trust – Financial distress merger
4. Clarendon National – Withdrew from line of business
5. CNA Re of London – Ceased operations
6. Farmers Insurance – Withdrew from FL
7. Reciprocal of America – Taken over by VA DOI
8. Frontier – Withdrew from line of business
9. Insurance Corp of America – Insolvent
10. Legion – Insolvent
11. Lloyd’s Syndicates 376, 991, 1007 – Ceased operations, placed in runoff
12. MAG Mutual – Withdrew from hospitals
<table>
<thead>
<tr>
<th></th>
<th>Company</th>
<th>Status</th>
</tr>
</thead>
<tbody>
<tr>
<td>13.</td>
<td>MIIX</td>
<td>Ceased operations, placed in runoff</td>
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<td>14.</td>
<td>MMI</td>
<td>Financial distress merger</td>
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<td>15.</td>
<td>PHICO</td>
<td>Insolvent</td>
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<td>16.</td>
<td>PIE Mutual</td>
<td>Insolvent</td>
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<td>17.</td>
<td>Princeton</td>
<td>Withdrew from medmal in PA</td>
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<td>18.</td>
<td>Professional Medical</td>
<td>Insolvent</td>
</tr>
<tr>
<td>19.</td>
<td>Reliance</td>
<td>Insolvent</td>
</tr>
<tr>
<td>20.</td>
<td>Safeco</td>
<td>Withdrew from physician business</td>
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<tr>
<td>21.</td>
<td>SCOR Re</td>
<td>Withdrew from line of business</td>
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<td>22.</td>
<td>Swiss Re</td>
<td>Withdrew from line of business</td>
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<td>23.</td>
<td>St. Paul</td>
<td>Withdrew from line of business</td>
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<td>24.</td>
<td>UnionAmerica</td>
<td>Ceased operations, placed in runoff</td>
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<td>25.</td>
<td>Zurich</td>
<td>Withdrew from physicians, except in select circumstances</td>
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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
- Car Accident

Millions

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

Size of Indemnity

Percentage of Closed Claims

12%
10%
8%
6%
4%
2%
0%

>=500k, <1mill >=1mill

1996
1999
2002
<table>
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<tr>
<th>Large Claims Analysis</th>
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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
Increasing Severity

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

Value of money
Risk-free society

Incomprehensibly large judgments in other areas
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

• 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*
Claims in Internal Medicine
Types of Claims

- Communication: 35%
- Delay in Diagnosis: 35%
- Adverse Outcomes of Disease Management: 30%
Types of Claims

35%: *Delay in Diagnosis*
- Breast cancer
- Iron deficiency anemia
- Chest pain
- Lung cancer

30%: Adverse outcomes of disease management
- Diabetic complications
- Drug reactions
Types of Claims

Communication (35%)

- Documentation
- Information
  - Lab and x-ray results, sign-out
  - Doctor-patient, -nurse, -doctor
- Informed consent
- Compliance
- Patient anger
Cases

Complex cases in which the suit is precipitated by straightforward issues of communication

- Pancreatitis in an alcoholic patient who harbored mild hyperparathyroidism
- CVA in patient with mild reactive thrombocytosis
- MI in patient with operable CAD which referring physicians were led to believe was inoperable
60-y.o. with fever, nausea, vomiting and radicular low back pain. Negative MRI spine, CT abdomen and gallium scan.
- L.P. not performed until day 12.

14-y.o. presented to e.r. at midnight with chills, fever, and emesis x2. T 102 B/P 74/40. 4000cc iv fluid did not raise pressure. CBC drawn, pt. admitted and antibiotics started just after pt. developed generalized ecchymoses.
Trends

- More medically complex cases
- Allegations of premature hospital discharge
  - Elder abuse
- More claims involving geriatric patients
- “Failure to prevent” claims now seen
  - Complications of hypertension and diabetes
  - Breast and colon cancer
  - Responsibility for screening
- Continued difficulty with dx of chest pain and breast cancer
Medication Claims

For internists:
- Anti-coagulants
- Steroids
- Aminoglycosides

Overall:
- Oxytocic agents
- Psychotropic
- Analgesics
- Anti-arrhythmic
Costs of Coverage
September 11
Effect is inversely proportional to the size of the insurance company
Average Rate Increases

- Int Med: 15%
- Gen Surg: 20%
- OBGYN: 22%

Medical Liability Monitor
Recent Internal Medicine Rates

- San Francisco
- FL (Dade, Broward)
- NV (Clark)
- Philadelphia
- West VA

Yearly Rates:
- 2000
- 2001
- 2002
- 2003

PENDING

Locations mentioned:
- San Francisco
- FL (Dade, Broward)
- NV (Clark)
- Philadelphia
- West VA
Pricing Trends

TDC Calendar Year Nationwide Average Rate Changes

-4% -2% 0% 2% 4% 6% 8% 10% 12% 14% 16%


Manual Rate Change
Net Rate Change
Old

- It’s just a few bad doctors…

New

- It’s not the doctors, it’s the insurance companies…

Apparently we were misinformed
Underwriting Results 1991-2000

Source: 2000 NAIC Profitability Report

Texas State Senate Prompt Payment Committee, August 15, 2002

Source: 2000 NAIC Profitability Report
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.”
Goals and Benefits

- **Sustainable** insurance system providing full indemnification of actual loss
- **More** money for injured patients
- **Faster** settlements
- Preserve **access** to medical care without impeding access to courts for truly injured patients
- Society should not incur **double** costs
- **Assure** money is available at the time it is needed
MICRA Helps Reduce California Medical Liability Premium Rates by 40%

The Doctors’ Company
1976-2001

Average Premium 1976*  Average Premium 2001

$23,698  $14,107
adjusted to 2001 dollars

$7,614 actual premium in 1976

* $7,614 average premium adjusted to 2001 dollars on the Annual Urban CPI Index for a $1 Million/ $3 Million Claims-Made Policy Premium
MICRA Reduces Verdict Cost and Frequency

$1 Million+ Verdicts Per 1,000 Doctors

- New York (NY): 3.71
- New Jersey (NJ): 3.10
- Ohio (OH): 2.40
- Florida (FL): 2.14
- National Avg ex CA: 1.93
- California (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

The Doctors’ Company, 1997-2001
Injured Patients Benefit Directly

Proceeds of a $1 Million Judgment

- With MICRA: $800,000
- Without MICRA: $200,000

### Increasing Cost of Malpractice Claims Despite MICRA

#### Total % Increase 1984-2000

<table>
<thead>
<tr>
<th>Category</th>
<th>% Increase 1984-2000</th>
<th>Average Annual Increase</th>
</tr>
</thead>
<tbody>
<tr>
<td>Average Indemnity Cost</td>
<td>153.1%</td>
<td>5.6%</td>
</tr>
<tr>
<td>Health Care Cost</td>
<td>144.2%</td>
<td>5.4%</td>
</tr>
<tr>
<td>All Consumer Items Inflation</td>
<td>65.7%</td>
<td>3.0%</td>
</tr>
</tbody>
</table>

US Cities CPI vs. TDC California Allocated Claims Closed with Indemnity 70
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

- 1998: $0
- 1999 Lost Tort Reform: $40
- 2000: $50

Paid Claims

Millions

$70
$60
$50
$40
$30
$20
$10
$0

1998
1999 Lost Tort Reform
2000
Oregon: Loss of Tort Reform

Total Plaintiff’s Demand in Settled Cases

- 1998: $0
- 1999: $50,000,000
- 2000: $100,000,000
- 2001: $150,000,000
- 2002: $200,000,000
- 2003: $250,000,000

Total Demand
Ineffective Tort Reform

Worse than none
Texas

• 1995
  • Eliminated joint liability for defendants with less than 51% fault
  • Limited punitive damages
• 1997
  • Expert witness reform (board certification or substantial practice or teaching experience)
  • $500,000 wrongful death cap adjusted for inflation, now $1.3 million
Ineffective Tort Reform

- Counties authorized to adopt alternative dispute resolution systems
- 1998
  - Prohibits arbitration agreements without the signature of the patient’s attorney
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.
• 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.”
“…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.”
Summary

• Exposure is greater.
• Financial market subsidies have ended.
• Capacity is shrinking and reinsurance is more expensive.
• Internists face increasing exposure in more complex claims, for medication related errors, and for continuing issues in communication.
• 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.
• TDC is proud to partner with ACP in the service of the specialty and the profession.
"I don't feel quite as fulfilled when I save a lawyer."