

ALASKA LEGISLATURE COMMITTEE FILES 1993-1994 8672

7822 HOUSE HEALTH EDUCATION & SOCIAL SERVICES

beds. However, the 36 hospitals of this size accounted for only 11 percent of the hospital beds. Indiana has 11 hospitals with more than 500 beds each, which accounted for 30 percent of the hospital beds in the state. The occupancy rate of the state's community hospitals averaged 68 percent for 1984.

### Regulation of Insurance Rates and Description of Medical Malpractice Insurers

Indiana is a "file and use" state. Companies must file proposed rate changes with the Department of Insurance before they become effective; however, prior approval is not required before the effective date. State Department of Insurance officials advised us that the highly competitive insurance situation in Indiana has kept rates low and has made their regulatory responsibilities easier. These officials stated that most of their effort is directed toward ensuring that the rates are not discriminatory and that they are adequate to ensure each company's continued solvency without being excessive.

The Medical Protective Insurance Company insures over 70 percent of the physicians in the state. The remainder are insured by either the St. Paul Fire and Marine Insurance Company (St. Paul Company), the Physician's Insurance Company of Indiana, or the Rockwood Insurance Company (Rockwood). The three companies participating in our study<sup>6</sup> insured over 85 percent of the physicians seeking malpractice insurance in the state.

The Pennsylvania Hospital Insurance Company and the St. Paul Company were the two major insurers of Indiana hospitals, and they both participated in our study.<sup>6</sup> Rockwood also insures some hospitals in the state.

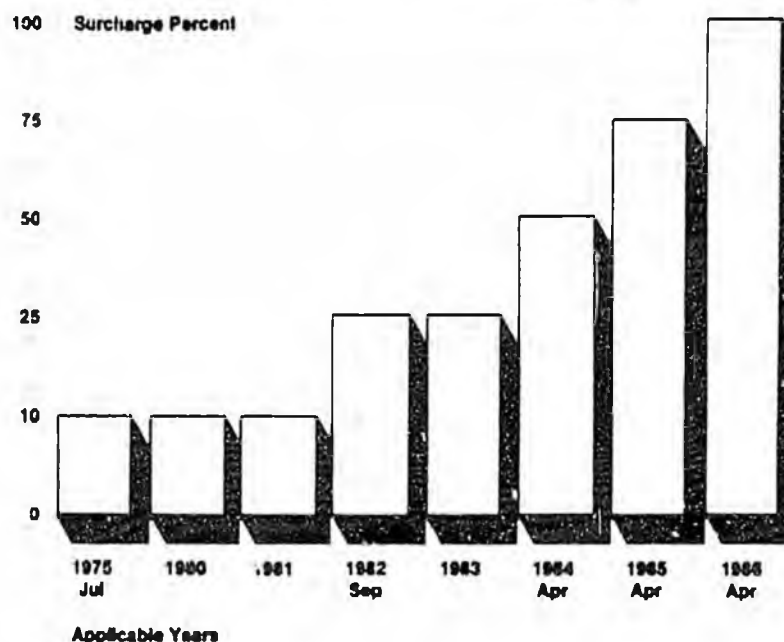
The Pennsylvania Hospital Insurance Company and the St. Paul Company insure over 70 percent of total occupied hospital beds in Indiana. If the self-insured occupied hospital beds are not considered as part of the insurance market, the two companies insure over 90 percent of the beds.

Indiana's Patient's Compensation Fund, created by the medical malpractice legislation of 1975, is a major source of insurance for both physicians and hospitals in the state. At the time of our review, Indiana officials stated that virtually all of the state's physicians and hospitals

<sup>6</sup>See appendix I for a list of malpractice insurers requested to provide data for Indiana.

were voluntarily participating in the Fund. To participate, each physician and hospital is assessed a surcharge. The surcharge remained constant at 10 percent of the premium paid by the provider for basic coverage from July 1975 through August 1982. However, since September 1982, the surcharge rate has increased four times to reach its current rate of 100 percent. Figure 1 shows the changes in the Fund surcharge rate.

Figure 1: Surcharge Rate of the Indiana Patient's Compensation Fund, 1975-86



### Medical Malpractice Situation in the Mid-1970's

In the mid-1970's, Indiana's health care system was approaching a crisis due to the increasing number of medical malpractice suits being filed and the large amounts of damages being awarded for such suits. The Indiana Medical Malpractice Commission reported that between 1970 and 1975, the frequency of claims filed against physicians had increased by 42 percent, and the average damage award had increased from \$12,993 to \$34,297. The Indiana Medical Malpractice Study Commission also reported that physicians' medical malpractice insurance premiums increased by 410 percent from 1970 to 1975. During this period, 7 of the 10 primary medical malpractice insurance companies in Indiana stopped writing new policies, canceled policies, or limited their new business and

their liability. As a result, many physicians were left with inadequate malpractice insurance coverage, or no coverage at all.

The insurance availability crisis was also affecting the practice of medicine. For example, some primary care physicians opted for early retirement, while others stopped doing the more complicated procedures that entailed greater risks. Hospitals discontinued some emergency services and canceled some types of surgery due to threat of malpractice claims. The increasing threat of medical malpractice suits, coupled with the decreasing availability of medical malpractice insurance, had begun to adversely affect how and what type of medical care was provided to patients.

---

## Response to Problems

To ensure the continuation of medical services in Indiana, the state legislature passed the Medical Malpractice Act of 1975 on April 4, 1975. The bill was signed into law on April 24 and became effective on July 1, 1975. This was the first comprehensive malpractice statute in the nation. The Indiana Supreme Court has upheld the constitutionality of key aspects of the legislation given that its goal is to protect the health of the citizens of Indiana by preventing a reduction of health care services. These key aspects include (1) placing limits on recoverable amounts, (2) establishing the Patient's Compensation Fund, (3) setting a statutory time limit for filing malpractice claims, and (4) requiring submission of claims to medical review panels.

---

## Limits on Recoverable Amounts

Indiana's Medical Malpractice Act of 1975 limits the total amount recoverable for any patient injury or death to \$500,000. This limit applies to any and all damages, including pain and suffering, economic losses, and the cost of future medical care. The Indiana Supreme Court has held that the limitation on recovery was a reasonable means to achieve the goals of securing medical malpractice insurance availability and assuring that medical practitioners continue practicing in Indiana.

---

## State Patient's Compensation Fund

Indiana's Medical Malpractice Act created the Fund, in which surcharges are collected from health care providers to pay claims filed for amounts greater than \$100,000. The Fund receives no funds appropriated by the legislature or tax dollars, and all administrative expenses are paid from the Fund. The Department of Insurance may use money from the Fund to retain risk managers, defense counsel, and financial

advisors. Claims against the Fund are either settled by negotiation or may be litigated in court.

The cost of a patient's award is apportioned between the health care providers (or their insurers) and the state-run Fund. As a condition of participation in the Fund, health care providers are required to purchase basic coverage (\$100,000/\$300,000 for physicians; \$100,000/\$2 million for hospitals under 100 beds and \$100,000/\$3 million for hospitals of 100 beds or more) or prove self-insurability. To recover more than \$100,000, the plaintiff must file a claim against the Fund. Claims against the Fund may be litigated only as to the amount of damages as the liability is established either by litigation or settlement against the individual health care provider or his insurer on the initial \$100,000 of liability.

---

#### Statute of Limitations

Indiana's statute of limitations requires claims to be made within 2 years of the alleged act, omission, or neglect. Minors alleging injury at any time before their sixth birthday have until their eighth birthday to file a claim. According to an Indiana Hospital Association official, the courts of Indiana have held this statute runs from the time of alleged incident rather than from the date of discovery. Officials of the Indiana Medical Association and a malpractice insurer stated that this shortened period enables insurers in Indiana to better defend malpractice claims by reducing many of the problems caused by the long periods which may elapse between the incident and the claim and between the claim and its closure.

---

#### Medical Review Panels

Indiana's Medical Malpractice Act provides for the establishment of panels to review all proposed malpractice complaints against health care providers before the claim can be filed in court. A panel is composed of a health care provider selected by the plaintiff, a health care provider selected by the defendant or defendants, and a third health care provider selected by the first two panel members. The panel is chaired by an attorney, who is charged with advising panel members on legal matters and drafting the panel's final opinion, but he has no vote on the final opinion. The panel's sole duty is to consider evidence submitted by both parties and to express an opinion as to whether the defendant(s) acted or failed to act within the appropriate standards of care as charged in the complaint. The panel opinion is not binding upon any party, but it may be admitted into evidence by either side if litigation results. The aim of the panels is to reduce nuisance suits and to avoid

lawsuits whenever possible by advocating quicker settlements of claims outside of the court system.

### Claims Reporting

Under Indiana's Medical Malpractice Act, all malpractice claims settled or adjudicated against a health care provider (including hospitals) must be reported to the Department of Insurance. The department must then report claims against individual practitioners to the Medical Licensing Board and other licensing authorities of the state. This board may then review the health care provider's fitness to remain in practice and censure, place on probation, suspend, or revoke the provider's license.

Indiana's Medical Malpractice Act also

- established the Indiana Residual Malpractice Insurance Authority to provide liability insurance to physicians unable to obtain it from commercial insurers, commonly referred to as a joint underwriting association;
- precluded inclusion of dollar amounts in medical malpractice pleadings; and
- limited attorney's fees to 15 percent of any recovery from the Patient's Compensation Fund.

### Recent Changes to Indiana's Medical Malpractice Act

In the last 2 years, the Indiana legislature enacted the following changes:

- Allowed the Fund and insurers to use periodic payments in lieu of lump-sum payments in paying awards or settlements to the claimant.
- Permitted Fund dollars to be used to purchase the services of persons, firms, and corporations to aid in protecting the fund against claims.
- Allowed the Fund to make payments to claimants twice a year (January 15 and July 15) instead of only once a year.
- Raised the Fund's annual surcharge rate in April 1985 to 75 percent of the cost of needed medical malpractice insurance and to 100 percent in April 1986.
- Required a health care provider's insurer to notify the insurance commissioner of any malpractice case upon which it has placed a reserve of \$50,000 or more.
- Allowed a patient to commence court action against a provider for malpractice without a Panel opinion as long as damages sought are no greater than \$15,000.

- Allowed defendants to introduce evidence to the jury that a plaintiff received reimbursement of costs from other sources.

## Effect of Indiana Tort Reforms

Officials of Indiana's Medical Association, Hospital Association, Bar Association, and leading malpractice insurers believe that Indiana's tort reforms have greatly stabilized Indiana's medical malpractice situation over the last 11 years. Regarding specific provisions of the act, three or more interest groups believed the limitation on total size of awards/settlements and the use of pretrial screening panels had a major stabilizing effect.<sup>6</sup>

Four of the six interest groups believed that Indiana's \$500,000 statutory limit on the recoverable amount for medical malpractice awards/settlements had a major effect on decreasing the size of awards/settlements. As pointed out by an Indiana Medical Association official, the limit has precluded any million-dollar settlements. Officials of a large malpractice insurance company added that the limit on awards, along with Indiana's pretrial screening panels, had helped keep the legal costs associated with defending malpractice claims in Indiana well below those for the rest of the country. However, the Indiana Trial Lawyers Association believed that the \$500,000 limit deprives severely injured patients of fair compensation.

Three of the six interest groups believed there had been some major effect from the act's provision requiring claims in excess of \$15,000 to obtain a medical review panel opinion before any court action. The physician group, Indiana Bar Association, and Indiana Department of Insurance agreed that the panel process had decreased the number of claims that go to trial. The Indiana Medical Association stated that the panel process substantially decreases the number of claims going to trial and decreases the time required to close claims. According to officials of a large Indiana malpractice insurance company, only 2 percent of claims filed against the company go to court. They stated that such a low percentage of claims going to court can be attributed to Indiana's panel process. This company also attributed its much lower legal costs to defend claims in Indiana to the panel process. For example, according to company officials, the company's average cost of defending a claim in Indiana is about \$2,100 versus about \$10,000 in Michigan and Illinois.

<sup>6</sup>Our methodology for obtaining the views of major interest groups and for analyzing their responses is described in GAO/HRD-87-21, pp. 10-11. The specific interest groups for Indiana are presented in appendix II of this report.

---

## Key Indicators of the Situation Since 1980

Malpractice insurance premiums for physicians and hospitals have risen during the last 6 years. Most of the increases occurred in 1985 and 1986 and resulted primarily from increases in the Fund surcharge rate as the Fund experienced a dramatic increase in both the number of claims and total amount paid. From 1980 through 1984, frequency of claims against physicians almost doubled, but the average paid claim decreased slightly. The frequency of claims against hospitals increased only slightly from 1981 to 1984; however, the average paid claim increased by 57 percent. Insurers' average costs to investigate and defend claims increased by 18 percent over this period for claims against physicians and 19 percent for claims against hospitals.

---

## Physicians

### Cost of Malpractice Insurance

As of January 1, 1986, there was a wide variation in malpractice insurance rates among different physician specialties in Indiana. For example, The Medical Protective Company's annual premium, including the Fund surcharge, ranged from \$1,293 for the specialties of general practice (no surgery), internal medicine (no surgery), pediatrics (no surgery), and pathology to \$11,380 for obstetrics/gynecology and neurosurgery.

The rate of increase in medical malpractice premiums has not been uniform among physician specialties. High-risk specialties, such as neurosurgery and obstetrics, gynecology, have experienced the highest percentage increases. As shown in table 2, the increases in premiums (including the Fund surcharge) from 1980 to 1986 ranged from 53 percent for ophthalmology to 116 percent for obstetrics/gynecology.

Table 2: Cost of Insurance\* for Selected  
Specialties, 1980 and 1986

Specialty	Insurance rate plus Fund surcharge		Percent increase 1980-1986
	1980	1986	
General practice (no surgery)	\$725	\$1,293	78
Internal medicine (no surgery)	725	1,293	78
Pediatrics (no surgery)	725	1,293	78
Pathology	725	1,293	78
General practice (minor surgery)	1,208	2,328	93
Internal medicine (minor surgery)	1,208	2,328	93
Pediatrics (minor surgery)	1,208	2,328	93
Radiology	1,208	2,328	93
Psychiatry	1,208	2,328	93
Ophthalmology/surgery	2,120	3,234	53
General surgery	4,973	7,760	56
Anesthesiology	4,973	7,760	56
Plastic surgery	5,271	9,312	77
Orthopedic surgery	5,798	10,605	83
Obstetrics/gynecology	5,271	11,380	116
Neurosurgery	5,798	11,380	96

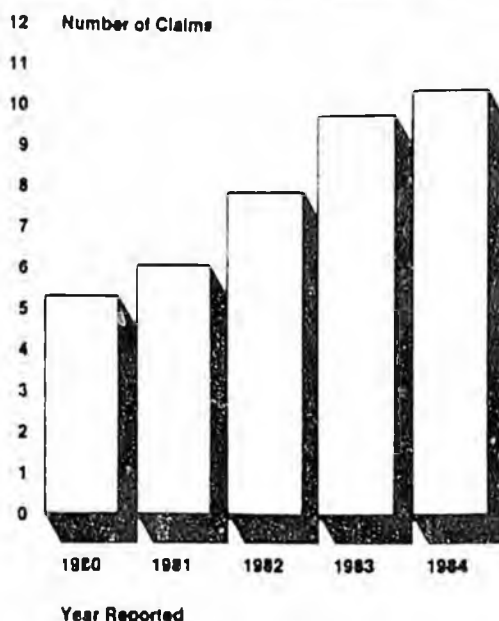
\*Rates shown are those of The Medical Protective Company for a \$100,000/\$300,000 occurrence policy plus the Fund surcharge as of January 1 each year. Total coverage is \$500,000/unlimited for providers participating in the Fund. Under an occurrence policy, the insurance company is liable for any incidents that occurred during the period the policy was in force, regardless of when the claim may be filed

The St. Paul Company and the Physicians Insurance Company of Indiana increased their rates by an average overall increase of 76 percent and 17 percent, respectively, during 1985, according to the Department of Insurance. It should be noted, however, that this represented the first increase for the latter company since it began providing medical malpractice insurance on July 1, 1982.

### Frequency of Claims

The claims experience for The Medical Protective Company and the St. Paul Company indicated that the frequency of claims filed (per 100 physicians) for all physicians increased each year from 1980 to 1984. As shown in figure 2, the frequency of claims filed against physicians insured by these companies almost doubled from— 5.3 in 1980 to 10.2 in 1984.

Figure 2: Frequency of Claims per 100  
Physicians, 1980-84



These data also showed variations in the frequency of claims filed (per 100 physicians) among the selected specialties. As shown in table 3, the frequency of claims for the majority of specialties fluctuated from year to year. For example, the frequency of claims for general surgery increased from 12.0 in 1980 to 21.2 in 1981 and then remained relatively constant through 1984. For orthopedic surgery and obstetrics/gynecology, however, the frequency of claims increased dramatically between 1980 and 1984, 159 and 251 percent, respectively. The frequency of claims for the remaining specialties fluctuated from year to year but, with the exception of plastic surgery, each had more reported claims in 1984 than in 1980.

Indiana: Low Rates but Solvency of State  
Patient's Compensation Fund a Concern

Table 3: Frequency of Claims per 100  
Physicians for Selected Specialties,  
1980-84

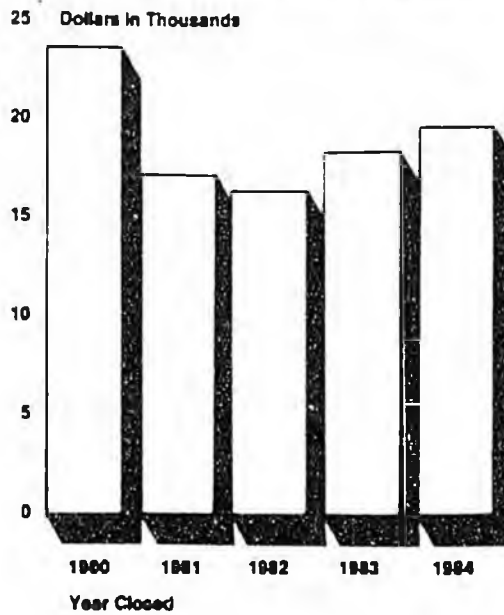
Specialty	1980	1981	1982	1983	1984	Percent increase (1980-1984)
General practice	1.0	3.9	3.3	4.1	4.3	330
Internal medicine	2.7	1.8	4.4	5.6	4.2	56
Pediatrics	1.7	1.2	2.4	3.9	5.5	224
General surgery	12.0	21.2	19.8	19.4	19.3	61
Neurosurgery	23.7	19.2	30.2	36.6	24.5	3
Ophthalmology/surgery	6.8	4.0	7.2	6.1	9.1	24
Orthopedic surgery	13.2	16.9	24.4	33.5	34.2	159
Plastic surgery	25.1	37.0	9.6	44.9	18.1	(28)
Obstetrics/ gynecology	9.5	14.5	21.6	26.8	33.3	251
Radiology	2.9	2.7	6.3	3.2	5.7	97
Psychiatry	1.8	3.0	0.6	5.2	5.2	189
Anesthesiology	3.7	5.8	7.3	6.1	5.9	59
Pathology	0	1.5	0.9	2.4	2.5	<sup>a</sup>

<sup>a</sup>Cannot compute due to zero value in 1980.

Size of Awards/Settlements

The average size of awards/settlements (average paid claim) for all physicians fluctuated somewhat. For example, figure 3 shows the paid claims experience of The Medical Protective Company and the St. Paul Company. The average paid claim in 1984 was smaller than it was in 1980.

Figure 3: Average Paid Claim\* for  
Physicians, 1980-84



\*Each indemnity payment limited to \$100,000.

As shown in table 4, no clear trend is evident in the average paid claim for the selected specialties. Because the number of physicians in any one specialty is relatively small, the base of spreading total claims paid is small. As a result, a few large claims paid in a given year for a given specialty could have a significant effect on the average paid claim for that specialty that year.

Table 4: Average Paid Claim for  
Selected Specialties, 1980 and 1984

	1980	1984
All Physicians	\$23,801	\$19,510
<b>Specialty</b>		
General practice	2,337	14,679
Internal medicine	50,500	20,286
Pediatrics	17,250	15,214
General surgery	22,214	29,208
Neurosurgery	3,750	17,565
Ophthalmology/surgery	0	26,516
Orthopedic surgery	74,167	30,677
Plastic surgery	5,333	0
Obstetrics/ gynecology	6,021	18,772
Radiology	5,750	21,083
Psychiatry	1,625	600
Anesthesiology	31,909	15,450
Pathology	0	4,909

Cost to Investigate and Defend  
Claims

The average cost to investigate and defend claims against Indiana physicians, based on the experience of The Medical Protective Company and the St. Paul Company, increased from \$3,012 in 1980 to \$3,567 in 1984—an increase of 18 percent.

Nine percent of the malpractice claims closed against physicians in 1984 involved no expense to the insurer. Forty-three percent of the claims were closed with an indemnity payment, while 49 percent were closed with costs only for investigating and defending the claim. The percentage of the latter remained about the same in 1984 compared to 1980. Over the same period, however, the percentage of claims closed with indemnity payment rose from 37 to 43 percent and the percentage of claims closed with no expense dropped from 13 to 9 percent.

Hospitals

Cost of Malpractice Insurance

As shown in table 5, the estimated malpractice insurance costs for hospitals in Indiana<sup>7</sup> increased from \$6.6 million in 1983 to \$9.4 million in 1985—an increase of 42 percent.

<sup>7</sup>See GAO/HRD-87-21, p. 11, for methodology for obtaining and analyzing hospital cost data. See appendix III of this report for information on the number of Indiana hospitals in the universe, GAO's sample, and the survey response. Unless otherwise indicated, the estimates presented in this study are also included with sampling errors in tables IV.1 through IV.5.

Indiana: Low Rates but Solvency of State  
Patient's Compensation Fund a Concern

**Table 5: Estimated Hospital Malpractice Insurance Costs by Type of Expenditure, 1983-85**

Expenditure	1983	1984	1985	1983-85 increase <sup>a</sup>	
				Amount	Percent
<b>Total</b>	<b>\$6.6</b>	<b>\$7.1</b>	<b>\$9.4</b>	<b>\$2.8</b>	<b>42</b>
Contributions to self-insurance trust funds	0.7	0.8	1.6	0.9	129
Premiums for purchased insurance	5.8	5.1	7.6	1.8	31
Uninsured losses	0.1	0.1	0.1	0.0	0

<sup>a</sup>Sampling errors for the amount and percentage of increase are not presented in appendix IV, but they are comparable to the errors for the estimated costs.

Note: Detail may not add to total due to independent estimation.

In 1985, 57 percent of the hospitals had annual malpractice insurance costs of less than \$50,000, as shown in table 6. No Indiana hospital had annual insurance costs of \$1 million or more in 1983 or 1985.

**Table 6: Estimated Distribution of Annual Malpractice Insurance Costs for Hospitals, 1983 and 1985**

Annual costs	1983			1985		
	No.	Percent	Cum. percent	No.	Percent	Cum. percent
Less than \$10,000	8	9.6	9.6	6	7.0	7.0
\$10,000 to \$24,999	27	31.9	41.5	18	20.9	27.9
\$25,000 to \$49,999	14	16.5	58.0	25	28.7	56.6
\$50,000 to \$99,999	13	15.1	73.1	6	7.5	64.1
\$100,000 to \$249,999	20	22.8	95.9	23	27.0	91.1
\$250,000 to \$499,999	2	2.8	98.7	4	4.3	95.4
\$500,000 to \$999,999	1	1.4	100.1 <sup>a</sup>	4	4.5	99.9 <sup>a</sup>
\$1 million or more	0	0.0	.	0	0	.
<b>Total</b>	<b>85<sup>a</sup></b>	<b>100.1<sup>a</sup></b>		<b>86</b>	<b>99.9<sup>a</sup></b>	

<sup>a</sup>Detail does not add to adjusted universe or 100 percent due to independent rounding.

Note: The total number of hospitals each year is based on the number of responding hospitals that provided the relevant data for that year.

As shown in table 7, the estimated average malpractice insurance cost per inpatient day increased 89 percent from 1983 to 1985. The average annual cost per bed increased 72 percent for the same period.

Indiana: Low Rates but Solvency of State  
Patient's Compensation Fund a Concern

**Table 7: Estimated Average Hospital Malpractice Insurance Costs per Inpatient Day and per Bed,<sup>a</sup> 1983-85**

	1983	1984	1985	1983-85 increase <sup>b</sup>	
				Amount	Percent
Average malpractice cost per inpatient day	\$1.41	\$1.73	\$2.67	\$1.26	89
Average annual malpractice cost per bed	\$426	\$489	\$732	\$306	72

<sup>a</sup>To determine the average annual malpractice cost per bed, we computed the daily occupied bed rate (the total number of inpatient days divided by 365) and increased that number by one bed for every 2,000 outpatient visits (emergency room visits were counted as outpatient visits). This number was divided into the hospital's total annual malpractice insurance cost.

<sup>b</sup>Sampling errors for the amount and percentage of increase are not presented in appendix IV, but they are comparable to the errors for the estimated costs.

As table 8 shows, from 1983 to 1985, 51 percent of Indiana's hospitals had increases in malpractice insurance costs per inpatient day ranging from 10 to 99 percent. Twenty-seven percent had increases between 100 and 199 percent, while 14 percent had increases of 200 percent or more.

**Table 8: Estimated Distribution of Changes in Malpractice Insurance Costs per Inpatient Day From 1983 to 1985**

Percentage change	Number	Hospitals	
		Percent	Cum. Percent
Increases of less than 10 percent or all decreases	6	7.4	7.4
+10 to 49	20	23.4	30.8
+50 to 99	24	28.0	58.8
+100 to 199	23	27.1	85.9
+200 to 299	9	10.9	96.8
+300 or more	3	3.2	100.0
<b>Total</b>	<b>85</b>	<b>100.0</b>	

Note: The total number of hospitals is based on the number of responding hospitals that provided data for both 1983 and 1985 so that the percent change could be calculated.

**Malpractice Insurance Rates for Hospitals**

The Pennsylvania Hospital Insurance Company, Indiana's leading insurer of hospitals, increased its rates for a \$100,000/\$3 million occurrence policy<sup>a</sup> from \$286 per bed in 1981 to \$382 in 1986—34 percent.

<sup>a</sup>Under an occurrence policy, the insurance company is liable for any incidents that occurred during the period the policy was in force, regardless of when the claim may be filed.

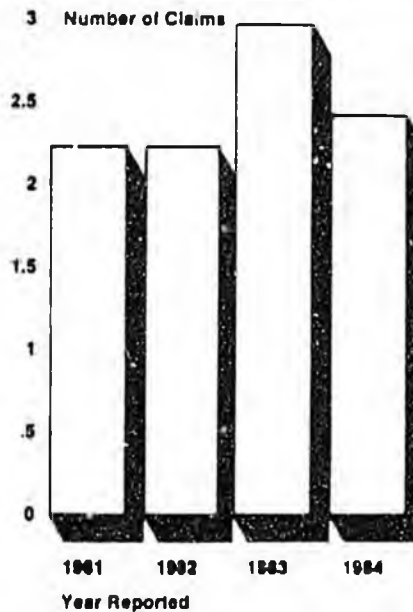
The St. Paul Company's rates for hospital malpractice insurance increased from \$230 per bed in 1980 to \$361 in 1986—57 percent—for a claims-made policy<sup>9</sup> with the same coverage limits.

With the surcharge added, the Pennsylvania Hospital Insurance Company's rates increased 112 percent—from \$315 in 1981 to \$669 in 1986—and the St. Paul Company's rate increased 150 percent—from \$253 in 1980 to \$632 in 1986.

### Frequency of Claims

The combined claims experience of the Pennsylvania Hospital Insurance Company and the St. Paul Company shown in figure 4 indicated that the frequency of malpractice claims filed per 100 occupied beds in the state increased from 2.2 to 2.4 during the period 1981-84.

Figure 4: Frequency of Claims per 100 Occupied Hospital Beds, 1981-84

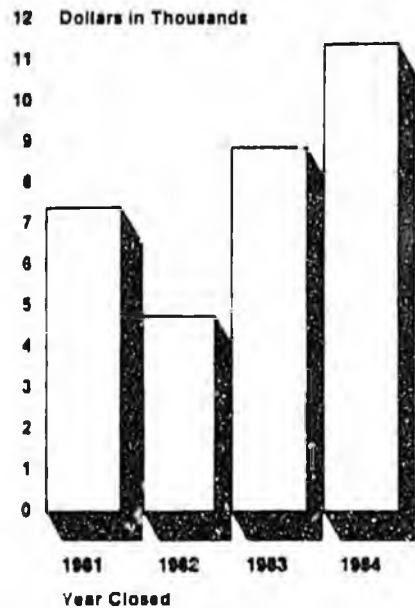


### Size of Awards/Settlements

Based on the combined claims experience of these two insurers, the average paid claim against Indiana hospitals increased from \$7,146 in 1981 to \$11,244 in 1984, as shown in figure 5.

<sup>9</sup>A claims-made policy covers malpractice events that occur after the effective date of the coverage and for which claims are made during the policy period.

Figure 5: Average Paid Claim\* for  
Hospitals, 1981-84



\*Each indemnity payment limited to \$100,000.

#### Cost to Investigate and Defend Claims

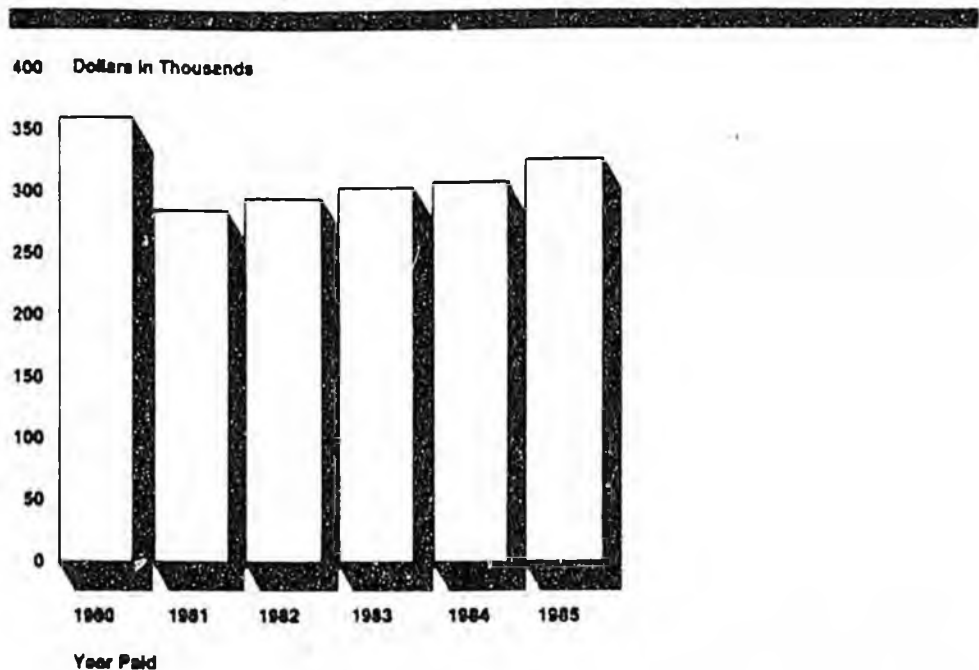
Based on the claims experience of the Pennsylvania Hospital Insurance Company and the St. Paul Company, the average cost to investigate and defend claims against Indiana hospitals increased by 19 percent, from \$1,075 in 1981 to \$1,275 in 1984.

Thirty-five percent of the malpractice claims closed against hospitals in 1984 involved no expense to the insurer. Thirty percent of the claims were closed with an indemnity payment, while 36 percent were closed with costs only for investigating and defending the claim. Between 1981 and 1984, the percentage of claims closed with costs only for investigating and defending the claim increased from 28 to 36 percent, while the percentage of claims closed with no expense dropped from 46 to 35 percent. The claims closed with indemnity increased from 26 to 30 percent during this period.

### Claims Against the Indiana Patient's Compensation Fund

Between 1980 and 1984, the Fund experienced a significant increase in the number and amount of claims paid. Specifically, the Fund paid \$3.9 million for 11 claims in 1980 versus \$17.7 million for 57 claims in 1984, and then decreased to \$11.7 million for 36 claims in 1985. The average amount paid for each claim closed against the Fund decreased from \$354,545 in 1980 to \$325,417 in 1985. However, as shown on figure 6, the average paid claim by the Fund has increased each year since 1981, from \$281,786 to \$325,417 in 1985—a 15-percent increase.

Figure 6: Average Paid Claim by the  
Indiana Patient's Compensation Fund,  
1980-85



### Major Medical Malpractice Problems—Current and Future

Major current or future concerns identified by the Indiana Hospital Association, the Indiana Trial Lawyers Association, and the Indiana Department of Insurance included

- medical societies not taking remedial action (e.g., sanctions or disciplinary measures) against members with malpractice histories; and
- physician specialty boards not taking remedial action against physicians with malpractice histories; and
- peer review groups not taking remedial action against physicians or hospitals with malpractice histories.

An Indiana Hospital Association official commented that effective sanctions against incompetent physicians have been marginal to nonexistent, and physicians are usually disciplined by the state's medical licensing board only for immoral or dishonest acts.

The president of the Indiana Trial Lawyers Association said there are no self-regulating actions by physician or hospital groups to reduce medical malpractice events. He was of the opinion that something similar to the State Bar Association's Attorney's Disciplinary Committee, which conducts hearings, disciplines, reprimands, and/or disbars lawyers, as necessary, is needed.

---

### The Solvency of the Patient's Compensation Fund

Officials from each of the six interest groups<sup>10</sup> expressed major concerns about the continued solvency of the Fund and the large surcharge increases needed to keep the Fund intact. In the last 2 years, the Indiana legislature has enacted several changes designed to aid the Fund, but officials still foresee future problems for the Fund.

An Indiana Bar Association official said the Fund was not set up to be actuarially sound and that payments have caught up with and exceed the amount set aside to handle claims. In fact, according to the Department of Insurance, the Fund was kept solvent in 1984 by the transfer of \$7.2 million of reserves from the state's medical malpractice joint underwriting association known as the Indiana Residual Malpractice Insurance Authority. According to the consulting actuary for the Indiana Department of Insurance, the Fund had accrued \$90 million in unfunded liabilities as of December 31, 1985.

---

### Solutions to Malpractice Problems

State actions to strengthen licensing and relicensing for physicians was the most widely supported action among the six groups we surveyed in Indiana. Specifically, the physician group, the Indiana Hospital Association, the Indiana Bar Association, the Indiana Trial Lawyers Association, and the State Department of Insurance firmly supported stronger physician licensing and relicensing practices at the state level. An official of the Department of Insurance commented that Indiana's Medical Licensing Board is doing more now than 5 years ago, but there still needs to be more disciplining of the medical profession. An Indiana Bar Association official said the Medical Licensing Board should be given more power to monitor the quality of practicing physicians.

---

<sup>10</sup>The specific interest groups for Indiana are listed in appendix II of this report.

Indiana's Hospital Association, Bar Association, Trial Lawyers Association, and Department of Insurance supported state action to increase peer review of physicians' medical practices. An Indiana Trial Lawyers Association official believed peer review practices should be taught in the medical educational process. An Indiana Bar Association official also expressed the view that there was a need for more physician education about peer review and more emphasis on physicians monitoring other physicians.

Significant support existed for state use of pretrial screening panels, such as the medical review panel currently in place in Indiana. Indiana's physician group, Bar Association, malpractice insurers, and Department of Insurance supported the use of pretrial screening panels. An Indiana Bar Association official added that pretrial screening panels greatly reduce the number of claims going to court.

Indiana's Bar Association, Trial Lawyers Association, and Department of Insurance strongly supported state actions to increase the amount of information available to consumers about physicians and hospitals with medical malpractice histories. An Indiana Trial Lawyers Association official remarked that consumers should be provided more information regarding incompetent doctors but that this is difficult and he is unsure of how this could be done. An Indiana Bar Association official added that information should be available to consumers to demonstrate that physicians can make mistakes and are not "God-like."

---

## Role of the Federal Government

None of the six interest groups in Indiana expressed strong support for any form of federal intervention because they felt these problems can best be addressed at the state level.

# Medical Malpractice Insurers Requested to Provide Statistical Data for Indiana

	Provided data for		Did not provide requested data
	Physicians	Hospitals	
The Medical Protective Company	X		
Pennsylvania Hospital Insurance Company		X	
Physicians Insurance Company of Indiana	X <sup>c</sup>		
Rockwood Insurance Company			X
St. Paul Fire and Marine Insurance Company	X	X	

<sup>c</sup>Data not included in our data base due to several missing data elements.

# Organizations Receiving GAO Questionnaire for Indiana

Completing questionnaire	Not completing questionnaire
<b>Physician group:</b>	
Indiana State Medical Association	Indiana Chapter of the American College of Physicians and Surgeons
Indiana Association of Pathologists, Inc.	Indiana Chapter, American Academy of Pediatrics
Indiana Psychiatric Society	
Indiana Roentgen Society, Indiana Chapter of American College of Radiology	
Indiana Section, American College of Obstetrics and Gynecology	
Indiana Orthopedic Society	
Indiana Academy of Ophthalmology	
Indiana Academy of Family Physicians	
<b>Hospital association:</b>	
Indiana State Hospital Association	
<b>Bar association:</b>	
Indiana Bar Association	
<b>Trial lawyers:</b>	
Indiana Trial Lawyers Association	
<b>Malpractice insurers:</b>	
The Medical Protective Company The Physicians Insurance Company of Indiana	St. Paul Fire and Marine Insurance Company Rockwood Insurance Company of Indiana Pennsylvania Hospital Insurance Company
<b>Insurance department:</b>	
Indiana Department of Insurance	

# Number of Indiana Hospitals in the Universe, GAO Sample, and Survey Response

Number of hospitals		Hospitals completing questionnaire	
Universe*	Sample	Number	Percent
115	64	50	78

\*1983 data.

# Estimated Hospital Data and Related Sampling Errors for Policy Years 1983, 1984, and 1985

**Table IV.1: Hospital Malpractice Insurance Costs and Related Sampling Errors by Type of Expenditure**

Dollars in millions

Expenditure	1983		1984		1985	
	Amount	Sampling error <sup>a</sup>	Amount	Sampling error <sup>a</sup>	Amount	Sampling error <sup>a</sup>
Total cost	\$6.6	\$ .8	\$7.1	\$ .8	\$9.4	\$1.2
Contribution to self-insurance trust funds	7	6	8	5	16	10
Premiums for purchased insurance	5.8	7	6.1	8	7.6	8
Uninsured losses	08	05	13	08	13	07

<sup>a</sup>Sampling errors are stated at the 95-percent confidence level.

Note: Detail may not add to total due to independent estimation. The adjusted universe of hospitals to which the estimated amounts related was 86 for 1983, 1984, and 1985. The adjusted universe is that portion of the total universe based on the sample response rate for which we can estimate data.

**Table IV.2: Distribution of Annual Malpractice Insurance Costs and Related Sampling Errors for Hospitals**

Figures in percents

Annual cost	1983		1985	
	Hospitals	Sampling error <sup>a</sup>	Hospitals	Sampling error <sup>a</sup>
Less than \$10,000	9.6	3.7	7.0	0.0
\$10,000 to \$24,999	31.9	8.0	20.9	6.8
\$25,000 to \$49,999	16.5	7.8	28.7	8.5
\$50,000 to 99,999	15.1	5.3	7.5	4.4
\$100,000 to \$249,999	22.8	4.8	27.0	5.7
\$250,000 to 499,999	2.8	1.4	4.3	2.0
\$500,000 to \$999,999	1.4	1.1	4.5	2.4
\$1 million or more	0	0.0	0	0.0

<sup>a</sup>Sampling errors are stated at the 95-percent confidence level.

Note: The adjusted universe of hospitals was 86 in 1983 and 1985.

**Table IV.3: Average Malpractice Insurance Costs per Inpatient Day and Related Sampling Errors**

Cost per day	1983		1984		1985	
	Cost per day	Sampling error <sup>a</sup>	Cost per day	Sampling error <sup>a</sup>	Cost per day	Sampling error <sup>a</sup>
\$1.41	\$1.41	\$ .22	\$1.73	\$ .29	\$2.67	\$ .40

<sup>a</sup>Sampling errors are stated at the 95-percent confidence level.

**Table IV.4: Average Annual Malpractice Insurance Costs per Bed and Related Sampling Errors**

Cost per bed	1983		1984		1985	
	Cost per bed	Sampling error <sup>a</sup>	Cost per bed	Sampling error <sup>a</sup>	Cost per bed	Sampling error <sup>a</sup>
\$426	\$426	\$61	\$489	\$64	\$732	\$100

<sup>a</sup>Sampling errors are stated at the 95-percent confidence level.

Appendix IV  
 Estimated Hospital Data and Related  
 Sampling Errors for Policy Years 1983, 1984,  
 and 1985

**Table IV.5: Distribution of Changes in  
 Malpractice Insurance Costs per  
 Inpatient Day From 1983 to 1985 and  
 Related Sampling Errors**

Figures in percents

Changes	Hospital	Sampling error*
Increases of less than 10% or decreases	7.4	4.6
Increases of 10% to 49%	23.4	7.8
Increases of 50% to 99%	28.0	8.9
Increases of 100% to 199%	27.1	9.5
Increases of 200% to 299%	10.9	7.1
Increases of 300% or more	3.2	2.2

\*Sampling errors are stated at the 95-percent confidence level.

Note: The adjusted universe of hospitals was 85.

FILE NO.

OS-190.650-010

December 1986

# MEDICAL MALPRACTICE

## Case Study on California



# Preface

December 31, 1986

Representative John Edward Porter and Senator John Heinz, Chairman, Senate Special Committee on Aging, asked GAO to identify the actions taken by the states to address medical malpractice insurance problems and to determine changes in insurance costs, the number of claims filed, and the average amount paid per claim. These case studies discuss the situation in each state.

This study on California focuses on the views of various interest groups on perceived problems, actions taken by the state to deal with the problems, the results of these actions, and the need for federal involvement. A summary of the findings for all six case studies can be found in our overall report, Medical Malpractice: Six State Case Studies Show Claims and Insurance Costs Still Rise Despite Reforms (GAO/HRD-87-21, December 31, 1986).



Richard L. Fogel  
Assistant Comptroller General  
for Human Resources Programs

# Overview

---

California health care and insurance officials we contacted generally believe that the state's comprehensive 1975 medical malpractice legislation, which has survived numerous constitutional challenges, has helped to moderate increases in the cost of malpractice insurance and in the size of malpractice awards/settlements. Key provisions of the legislation are a \$250,000 limit on awards for noneconomic damages, a fee schedule for plaintiff attorneys, and provisions for periodic payment of awards \$50,000 or over for future damages. These officials told us that they expect the legislation to have a greater effect in the future since the California Supreme Court has upheld the major provisions as constitutional, and the U.S. Supreme Court has twice refused to hear cases regarding this legislation. Despite these efforts, however, physician and hospital malpractice premiums are continuing to rise, as are the number and size of malpractice claims and settlements.

The California Trial Lawyers Association believed the legislation has impaired the rights of the injured malpractice victim to receive fair compensation for injuries caused by health care providers' negligence.

California's health care providers and malpractice insurers still believe that there are major problems in the state regarding the high cost of malpractice insurance, the excessive size of malpractice awards/settlements, the high legal costs associated with defending claims, and the incentive to perform medically unnecessary procedures to reduce the risk of liability (i.e., defensive medicine).

There was no widespread support among the groups we surveyed for any federal involvement. Officials generally believed that malpractice problems should be addressed at the state level.

# Contents

---

Preface		1
---------	--	---

---

Overview		2
----------	--	---

---

California: State Officials Believe Reforms Have Helped to Moderate Increases in Claims and Premiums	Background Medical Malpractice Situation in the Mid-1970's Response to Problems Effect of California Tort Reforms Key Indicators of the Situation Since 1980 Major Medical Malpractice Problems—Current and Future Solutions to Malpractice Problems Role of the Federal Government	6 6 8 8 10 10 21 24 24
---	---	--

---

Appendixes	Appendix I: Medical Malpractice Insurers Requested to Provide Statistical Data for California Appendix II: Organizations Receiving GAO Questionnaire for California Appendix III: Number of California Hospitals in the Universe, GAO Sample, and Survey Response Appendix IV: Estimated Hospital Data and Related Sampling Errors for Policy Years 1983, 1984, and 1985	26 27 28 29
------------	--	----------------------

---

Tables	Table 1: Number of Nonfederal Patient Care Physicians in California in Selected Specialties as of December 31, 1985 Table 2: Cost of Insurance for Selected Specialties in Southern California, 1980 and 1986 Table 3: Cost of Insurance for Selected Specialties in Northern California, 1980 and 1986 Table 4: Frequency of Claims per 100 Physicians for Selected Specialties, 1980-84 Table 5: Average Paid Claim for Selected Specialties, 1980 and 1984 Table 6: Estimated Hospital Malpractice Insurance Costs by Type of Expenditure, 1983-85	6 12 13 14 16 17
--------	---	---------------------------------

Table 7: Estimated Distribution of Annual Malpractice Insurance Costs for Hospitals, 1983 and 1985	17
Table 8: Estimated Average Hospital Malpractice Insurance Costs per Inpatient Day and per Bed, 1983-85	18
Table 9: Estimated Distribution of Changes in Malpractice Insurance Costs per Inpatient Day From 1983 to 1985	18
Table 10: Rates per Occupied Hospital Bed for Primary Coverage, 1980-86	19
Table IV.1: Hospital Malpractice Insurance Costs and Related Sampling Errors by Type of Expenditure	29
Table IV.2: Distribution of Annual Malpractice Insurance Costs and Related Sampling Errors for Hospitals	29
Table IV.3: Average Malpractice Insurance Costs per Inpatient Day and Related Sampling Errors	29
Table IV.4: Average Annual Malpractice Insurance Costs per Bed and Related Sampling Errors	29
Table IV.5: Distribution of Changes in Malpractice Insurance Costs per Inpatient Day From 1983 to 1985 and Related Sampling Errors	30

**Figures**

Figure 1: Frequency of Claims per 100 Physicians, 1980-84	14
Figure 2: Average Paid Claim for Physicians, 1980-84	15
Figure 3: Frequency of Claims per 100 Occupied Hospital Beds, 1980-84	20
Figure 4: Average Paid Claim for Hospitals, 1980-84	21

# California: State Officials Believe Reforms Have Helped to Moderate Increases in Claims and Premiums

## Background

### Population, Physician, and Hospital Characteristics

California is the most populous state. Over 90 percent of its 25.6 million people live in urban areas.<sup>1</sup> California had 69,208 physicians as of December 31, 1985,<sup>2</sup> and 483 nonfederal community hospitals with 83,033 available beds in 1984.<sup>3</sup> A total of 55,936 physicians were providing patient care— 46,122 were office-based and 9,814 were hospital-based. Table 1 shows the distribution of patient care physicians among 13 selected specialties.

**Table 1: Number of Nonfederal Patient Care Physicians in California in Selected Specialties as of December 31, 1985**

	Office-based practice	Hospital-based practice		Total
		Residents	Full-time physician staff	
General practice	7,075	636	286	7,997
Internal medicine	7,193	1,672	382	9,247
Pediatrics	3,156	656	228	4,040
Psychiatry	3,110	482	429	4,021
Pathology	966	197	145	1,308
Radiology	1,025	56	109	1,190
Ophthalmology	1,592	138	17	1,747
General surgery	2,898	779	113	3,790
Anesthesiology	2,358	308	171	2,837
Plastic surgery	549	11	16	606
Orthopedic surgery	1,967	264	57	2,288
Obstetrics/gynecology	3,173	394	105	3,672
Neurosurgery	409	61	19	489

Of California's 483 community hospitals, 242 were nongovernment, not-for-profit hospitals; 101 were state and local government hospitals; and 140 were investor-owned (for-profit) hospitals. Sixty-one percent of the state's community hospital beds were in nongovernment, not-for-profit hospitals; 19 percent were in state and local government hospitals; and 20 percent were in investor-owned hospitals. The most prevalent hospital size in California was the 100- to 199-bed facility. The hospitals of

<sup>1</sup>Population and ranking are as of July 1, 1984 (preliminary), and the urban/rural mix is as of April 1, 1980, from the *Statistical Abstract of the United States 1986*, 106th Edition, pp. 10, 12.

<sup>2</sup>*Physician Characteristics and Distribution in the U.S.*, 1986 Edition, Department of Data Release Services, Division of Survey and Data Resources, American Medical Association, (forthcoming)

<sup>3</sup>*Hospital Statistics*, 1985 Edition, American Hospital Association, p. 50.

that size accounted for 23 percent of the total community hospital beds. California had 13 community hospitals with more than 500 beds each, which accounted for about 11 percent of the state's community hospital beds. The occupancy rate for California community hospitals was 64 percent in 1984.

---

**Regulation of Insurance  
Rates and Description of  
Medical Malpractice  
Insurers**

California insurers are not required to obtain rate approval from the state insurance department, but they must provide rates and supporting information to the department if requested.

According to officials of the state insurance department, competition is keen among the physician-owned insurers, so availability of malpractice insurance is not a problem in California.

With about 22 percent of the physician market, the Doctors' Company is the leading medical malpractice insurer in California. Most physicians insured by the Doctors' Company are located in southern California. NORCAL Mutual Insurance Company is the leading medical malpractice insurer in northern California. NORCAL insures about 15 percent of the state's physicians. Two other companies that provided requested data were Physicians and Surgeons Underwriters Corporation and Cooperative of American Physicians, Inc. The Cooperative is a trust organization and is exempt from the state insurance department regulation. Two large insurers did not participate in our survey—Southern California Physicians Insurance Exchange in southern California and Medical Insurance Exchange of California in northern California. Agency officials we contacted agreed that the companies that participated in our survey would be representative of the physician medical malpractice market in California.

With respect to the malpractice insurance market for hospitals, the Farmers Insurance Group of Companies insured about 77 percent of the California hospitals in 1984. The St. Paul Fire and Marine Insurance Company (St. Paul Company) and the Association of California Hospital Districts also write malpractice insurance for California hospitals. All three companies participated in our survey.

Insurance companies in California use different rating territories. They vary among the insurance companies from as few as one to as many as five. The Doctors' Company uses three rating territories—northern California, southern California, and San Diego. The most predominately written coverage limits for physician medical malpractice policies were

\$1 million/\$3 million. For hospital malpractice policies, coverage limits varied among insurers. However, the predominately written coverage limits of the largest hospital insurer, Farmers Insurance Group of Companies, was \$500,000/unlimited.

---

## Medical Malpractice Situation in the Mid- 1970's

In the mid-1970's, a crisis developed in California regarding the lack of available and affordable medical malpractice insurance. The number of malpractice claims and size of the awards and settlements were escalating in the state. Some commercial insurers, such as Argonaut and Cignal-Imperial, reacted by withdrawing from the market. Others raised their premiums to unprecedented levels. When the malpractice crisis peaked in 1975, among the first to feel the pinch of skyrocketing premiums were the high-risk specialties in northern California. According to an official of the Doctors' Company, premiums for these high-risk specialties increased by as much as 422 percent. Officials of the California Hospital Association told us that some doctors in California decided to discontinue providing medical care involving high-risk procedures, some moved their practices to other states, and some opted to "go bare" (practice without malpractice insurance). Further, medical care was not available in all parts of California, and patients treated by uninsured doctors faced the probability of unenforceable judgments if they suffered serious injury as a result of malpractice.

---

## Response to Problems

In response to the statewide malpractice insurance turmoil, physician and insurance lobbyists urged passage of tort reforms. On May 16, 1975, the governor issued a proclamation that convened the state legislature in an extraordinary session. The proclamation called for the legislature to "enact laws which will change the relationship between the people and the medical profession, the legal profession, and the insurance industry and thereby reduce the costs which underlie these high insurance premiums." In September 1975 the legislature enacted the Medical Injury Compensation Reform Act of 1975 which:

- Established a sliding contingency fee schedule for plaintiff attorneys of 40 percent for the first \$50,000 recovered; 33-1/3 percent for the next \$50,000; 25 percent for the next \$100,000; and 10 percent of any amount over \$200,000.
- Imposed a \$250,000 limit on the amount recoverable for noneconomic losses to compensate for pain, suffering, inconvenience, physical impairment, disfigurement, and other nonpecuniary damage.

- Permitted a defendant to introduce evidence that the plaintiff is entitled to compensation for injuries from insurance; however, the plaintiff may then introduce evidence of premiums paid by the defendant for the insurance coverage.
- Required that the superior court, at the request of either party, order periodic payment of future damages rather than a lump-sum payment if the award equals or exceeds \$50,000 in future damages.
- Imposed a statute of limitations of 3 years after the date of injury or 1 year after the plaintiff discovers, or should have discovered, the injury, whichever occurs first. Actions by a minor under 6 have to begin within 3 years or before his 8th birthday, whichever provides a longer period.
- Required specific boards to keep certain records regarding convictions and judgments against their physicians and required reports from courts on judgments against physicians. Provided for additional reports from hospitals, health care service plans, or medical care foundations to licensing boards regarding the removal of staff physician privileges.
- Changed the name of the Board of Medical Examiners to the Board of Medical Quality Assurance, increased the membership to 19, and divided the work into three divisions.
- Required every insurer providing professional liability insurance to report to the licensing agency any malpractice settlement or arbitration award over \$3,000. (In 1979, the \$3,000 amount was increased to \$30,000 for physicians and surgeons.)
- Required a 90-day notice to health-care providers of the plaintiff's intention to sue for malpractice.
- Provided that any contract for medical services that contains a provision for arbitration of any dispute regarding malpractice also contain a specified disclosure statement as the first article of the contract.

On June 3, 1986, California voters passed Proposition 51, the Fair Responsibility Act, which amended the joint and several liability doctrine for noneconomic damages. Under a "joint and several liability" rule, all parties named in a suit are held equally responsible for damages. If the plaintiff wins the case, he can collect the full amount from any one of the defendants, even from a defendant who bears only a minor responsibility for the damages. The rule is sometimes referred to as the "deep pocket" rule, so named because the defendant with the deepest pocket sometimes ends up paying for injuries for which he is only partially responsible. Proposition 51 limits awards for noneconomic damages, such as pain and suffering, to a defendant's degree of fault causing the damages. However, the law retains joint and several liability for economic damages, such as lost wages and medical expenses.

## Effect of California Tort Reforms

No major effect from any specific tort reform or action was perceived by three or more interest groups we surveyed.<sup>4</sup> However, numerous health care and insurance officials we contacted credited the state's medical malpractice legislation with moderating California's increases in the cost of malpractice insurance and in the size of malpractice awards, particularly when compared to other states. Agency officials said the legislation has helped to slow the upward trend in escalating insurance premiums and jury awards. An official of the Doctors' Company stated that the Medical Injury Compensation Reform Act has been cited as a model for other states and has been credited with California's relative stability while a malpractice crisis is emerging across the nation. Further, a May 1985 California Medical Association-sponsored study concluded that the state's malpractice legislation had been effective in holding down malpractice claim costs. The study attributed savings in claims costs ranging from 8 percent in 1976 to 49 percent in 1985 to California's malpractice legislation.

Since the legislation was enacted in 1975, its provisions have been frequently contested in California courts. The act has withstood four separate California Supreme Court challenges. The U.S. Supreme Court has refused to hear two cases that were brought before it. An attempt to repeal the act in the California legislature was defeated in 1985. We were told that some plaintiff attorneys negotiating malpractice settlements and some courts frequently functioned on the basis that the act would be found unconstitutional and, as a result, did not abide by its provisions. Several officials believe that the full impact of the act will now be felt since the U.S. Supreme Court in 1985 refused to hear a case questioning the constitutionality of California's cap on noneconomic losses, such as pain and suffering, which, in effect, upheld the provision's constitutionality.

## Key Indicators of the Situation Since 1980

Malpractice insurance premiums for physicians have increased at a moderate rate since 1980. Rates of the largest hospital insurer decreased each year from 1980 through 1984, but increased sharply in 1985 and again in 1986. Frequency of claims against physicians increased 27 percent between 1980 and 1984, while the average paid claim against physicians increased about 87 percent. The frequency of claims against hospitals increased 17 percent, but the average paid claim increased 91

<sup>4</sup>Our methodology for obtaining the views of major interest groups and for analyzing their responses is described in GAO/HRD-87-21, pp. 10-11. The specific interest groups for California are shown in appendix II of this report.

percent. Further, from 1980 to 1984, insurers' average cost to investigate and defend malpractice claims more than quadrupled for claims against physicians and increased 64 percent for those against hospitals.

---

## Physicians

### Cost of Malpractice Insurance

As of January 1, 1986, there was a wide variation in malpractice insurance rates among various specialties in California. For instance, The Doctors' Company annual premium for coverage limits of \$1 million, \$3 million in southern California ranged from \$4,260 for general family practice (no surgery) to \$42,928 for obstetrics/gynecology. The NORCAL Mutual Insurance Company's rate in northern California ranged from \$3,632 for pathology and psychiatry to \$40,388 for neurosurgery. The annual premiums are higher in southern California than in northern California for most specialties.

The rate of increase in malpractice premiums has not been uniform among physician specialties. As shown in table 2, the increases in premiums from 1980 to 1986 for the selected specialties in Southern California ranged from 12 to 337 percent.

California: State Officials Believe Reforms  
Have Helped to Moderate Increases in Claims  
and Premiums

Table 2: Cost of Insurance<sup>a</sup> for Selected  
Specialties in Southern California, 1980  
and 1986

Specialty	1980	1986	Percent increase (1980-86)
General practice (no surgery)	\$3,674	\$4,260	16
Internal medicine (no surgery)	3,674	5,924	61
Pediatrics (no surgery)	2,042	7,524	268
Pathology	3,674	4,260	16
General practice (minor surgery)	3,674	10,024	173
Internal medicine (minor surgery)	3,674	5,924	61
Pediatrics (minor surgery)	2,042	7,524	268
Radiology	3,674	16,056	337
Psychiatry	2,042	4,260	109
Ophthalmology/ surgery	6,133	10,024	63
General surgery	15,182	28,576	88
Anesthesiology	15,182	20,492	35
Plastic surgery	13,437	28,576	113
Orthopedic surgery	17,869	33,632	88
Obstetrics/ gynecology	17,869	42,928	140
Neurosurgery	17,869	37,984	113

<sup>a</sup>Rates shown are those of The Doctors' Company for a \$1 million/\$3 million claims-made policy as of January 1 each year. A claims-made policy covers malpractice events that occur after the effective date of the coverage and for which claims are made during the policy period.

As shown in table 3, in Northern California the change in premiums from 1980 to 1986 ranged from a decrease of 27 percent for anesthesiology to an increase of 92 percent for obstetrics/ gynecology.

California: State Officials Believe Reforms  
Have Helped to Moderate Increases in Claims  
and Premiums

**Table 3: Cost of Insurance\* for Selected  
Specialties in Northern California, 1980  
and 1986**

Specialty	1980	1986	Percent increase (1980-86)
General practice (no surgery)	\$4,200	\$7,340	75
Internal medicine (no surgery)	4,200	5,012	19
Pediatrics (no surgery)	3,056	5,012	64
Pathology	3,056	3,632	19
General practice (minor surgery)	4,200	7,340	75
Internal medicine (minor surgery)	4,200	5,012	19
Pediatrics (minor surgery)	3,056	5,012	64
Radiology	4,200	5,012	19
Psychiatry	2,008	3,632	81
Ophthalmology/ surgery	4,200	7,340	75
General surgery	12,740	22,096	73
Anesthesiology	19,212	14,064	(27)
Plastic surgery	12,740	22,096	73
Orthopedic surgery	23,272	33,348	43
Obstetrics/ gynecology	19,212	36,872	92
Neurosurgery	23,272	40,388	74

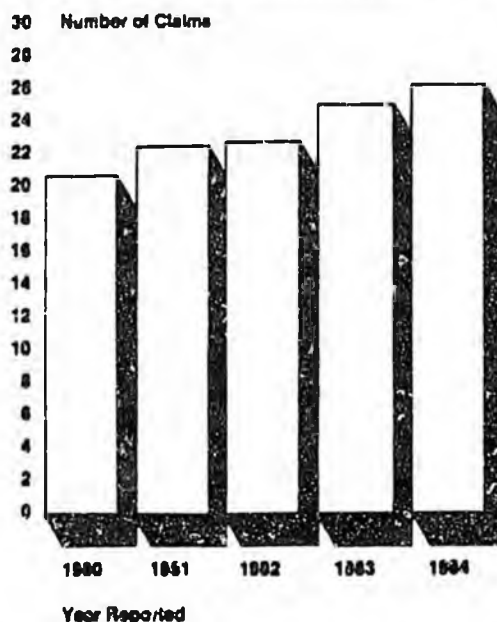
\*Rates shown are those of NORCAL Mutual Insurance Company for a \$1 million/\$3 million claims made policy as of January 1 each year

**Frequency of Claims**

Combined data from Cooperative of American Physicians, The Doctors' Company, Physicians and Surgeons Underwriters Corporation, and NORCAL Mutual Insurance Company indicated that the frequency of claims against physicians increased slightly from 1980 to 1984. As shown in figure 1, the frequency of claims per 100 physicians increased by 27 percent from 20.4 in 1980 to 26.0 in 1984.

California: State Officials Believe Reforms  
Have Helped to Moderate Increases in Claims  
and Premiums

Figure 1: Frequency of Claims per 100  
Physicians, 1980-84



There were wide variations in the frequency of claims filed per 100 physicians among the selected specialties. For example, as shown in table 4, from 1980 to 1984 the number of claims per 100 physicians in psychiatry increased 118 percent, while the number of claims against anesthesiologists remained the same.

Table 4: Frequency of Claims per 100  
Physicians for Selected Specialties,  
1980-84

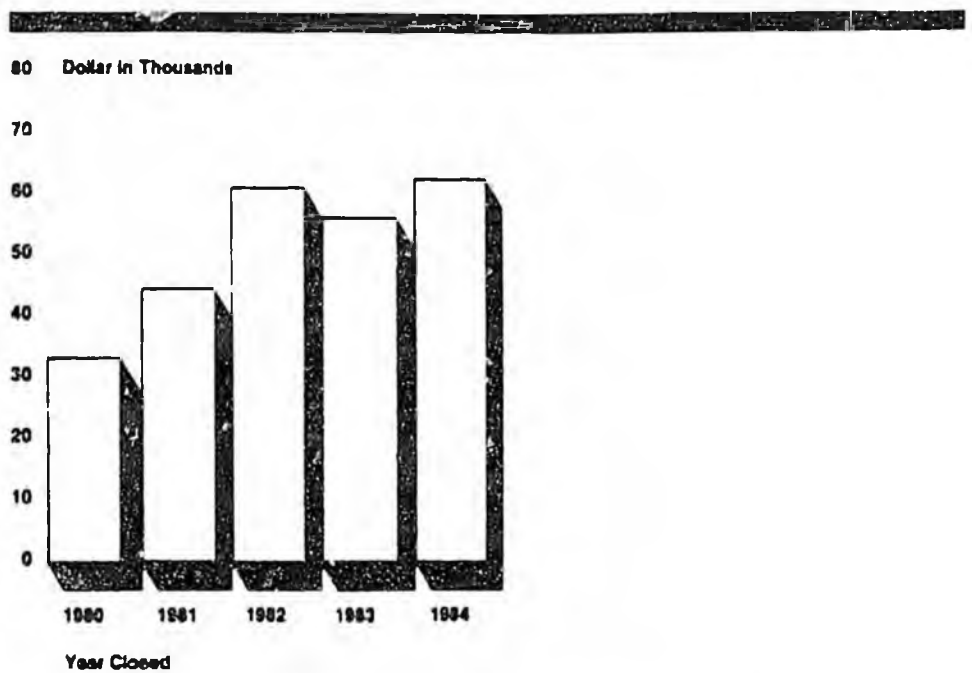
Specialty	1980	1981	1982	1983	1984	Percent Increase (1980-84)
Anesthesiology	20.1	19.3	17.5	20.7	20.1	0
General surgery	31.3	31.4	32.0	36.2	37.5	20
Neurosurgery	40.2	42.5	67.0	54.7	53.5	33
Plastic surgery	45.0	53.2	55.8	54.9	60.1	34
Orthopedic surgery	37.5	40.7	42.9	47.0	51.2	37
Ophthalmology/ surgery	12.6	15.1	12.4	18.4	18.0	43
Pathology	6.1	9.2	7.7	8.5	9.2	51
Obstetrics/ gynecology	33.9	41.7	44.1	49.6	51.1	51
Internal medicine	10.7	12.4	11.9	16.0	16.4	53
Pediatrics	8.1	11.3	11.4	11.1	13.4	65
Radiology	12.6	15.5	18.4	19.6	21.6	71
General practice	6.9	9.1	12.5	14.1	14.4	109
Psychiatry	3.8	6.9	6.1	7.8	8.3	118

**California: State Officials Believe Reforms  
Have Helped to Moderate Increases in Claims  
and Premiums**

**Size of Awards/Settlements**

As shown in figure 2, the average paid claim for the combined claims experience of the participating insurers of physicians in California increased from \$32,963 in 1980 to \$61,774 in 1984, an aggregate increase of 87 percent.

**Figure 2: Average Paid Claim for  
Physicians, 1980-84**



As shown in table 5, the average payment per claim increased between 1980 and 1984 for the selected specialties included in our review. Because the number of physicians in any one specialty is relatively small, the base for spreading total claims paid is small. As a result, a few large claims paid in a given year for a given specialty could have a significant effect on the average paid claim for that specialty that year.

California: State Officials Believe Reforms  
Have Helped to Moderate Increases in Claims  
and Premiums

**Table 5: Average Paid Claim for  
Selected Specialties, 1980 and 1984**

	1980	1984
All physicians	\$32,963	\$61,774
<b>Specialty</b>		
Orthopedic surgery	101,377	36,337
Ophthalmology/ surgery	49,700	22,816
Psychiatry	75,000	66,500
Radiology	30,630	29,276
Anesthesiology	62,567	70,925
Internal medicine	57,243	73,128
General practice	23,122	36,520
General surgery	54,471	90,582
Plastic surgery	23,236	41,216
Obstetrics/gynecology	50,973	92,628
Neurosurgery	41,667	91,619
Pediatrics	3,127	135,874
Pathology	1,324	71,250

**Cost to Investigate and Defend  
Claims**

Insurers' average cost to investigate and defend claims closed against physicians more than quadrupled from \$2,284 in 1980 to \$9,358 in 1984.

In 1980, 49 percent of the malpractice claims against California physicians closed by insurers participating in our study were closed with no expense to the insurers. By 1984, the percentage of claims closed with no expense had decreased to 40 percent, while the percentage of claims closed with indemnity increased from 15 percent to 24 percent. The percentage of claims closed with only the costs incurred to investigate and defend the claim was 36 percent in 1980, increased to 41 percent in 1982, and then decreased to 36 percent in 1983 and 1984.

**Hospitals**

**Cost of Malpractice Insurance**

As shown in table 6, the total estimated malpractice insurance costs for hospitals in California<sup>b</sup> increased from \$75.4 million in 1983 to \$98.6 million in 1985— 31 percent.

<sup>b</sup>See GAO/HRD-87-21 p. 11, for methodology for obtaining and analyzing hospital cost data. See appendix III of this report for information on the number of California hospitals in the universe.

California: State Officials Believe Reforms  
Have Helped to Moderate Increases in Claims  
and Premiums

**Table 6: Estimated Hospital Malpractice Insurance Costs by Type of Expenditure, 1983-85**

Dollars in millions

Expenditure	1983	1984	1985	1983-85 increase <sup>a</sup>	
				Amount	Percent
<b>Total</b>	<b>\$75.4</b>	<b>\$82.9</b>	<b>\$98.6</b>	<b>\$23.2</b>	<b>31</b>
Contributions to self-insurance trust funds	5.6	7.3	12.1	6.5	116
Premiums for purchased insurance	67.3	72.2	83.0	15.7	23
Uninsured losses	2.5	3.5	3.4	9	36

<sup>a</sup>Sampling errors for the amount and percentage of increase are not presented in appendix IV but they are comparable to the errors for the estimated costs

Note: Detail may not add to total due to independent estimation

In 1985, 68 percent of the hospitals had malpractice insurance costs of less than \$500,000, but 8 percent had annual insurance costs of \$1 million or more, as shown in table 7. There were no hospitals in the state with annual insurance costs less than \$25,000.

**Table 7: Estimated Distribution of Annual Malpractice Insurance Costs for Hospitals, 1983 and 1985**

Annual costs	1983			1985		
	Number	Percent	Cum. percent	Number	Percent	Cum. percent
Less than 10,000	0	0	0	0	0	0
\$10,000 to \$24,999	0	0	0	0	0	0
\$25,000 to \$49,999	30	13.9	13.9	25	11.7	11.7
\$50,000 to \$99,999	19	8.7	22.6	10 <sup>a</sup>	4.4 <sup>a</sup>	16.1
\$100,000 to \$249,999	58	26.7	49.3	55	25.5	41.6
\$250,000 to \$499,999	64	29.6	78.9	58	26.7	68.3
\$500,000 to \$999,999	32	14.9	93.8	50	23.4	91.7
\$1 million or more	13	6.2	100.0	18	8.2	99.9 <sup>b</sup>
<b>Total</b>	<b>216</b>	<b>100.0</b>		<b>216</b>	<b>99.9<sup>b</sup></b>	

<sup>a</sup>Estimates subject to relatively large sampling error and should be used with caution

<sup>b</sup>Detail does not add to 100 percent due to independent rounding

Note: The total number of hospitals each year is based on the number of responding hospitals that provided the relevant data for that year

As shown in table 8, both the estimated average malpractice insurance costs per day and annual per bed costs increased 37 percent from 1983 to 1985.

GAO's sample, and the survey response. Unless otherwise indicated, the estimates presented in this study are also included with sampling errors in tables IV.1 through IV.5.

California: State Officials Believe Reforms  
Have Helped to Moderate Increases in Claims  
and Premiums

Table 8: Estimated Average Hospital  
Malpractice Insurance Costs per  
Inpatient Day and per Bed,<sup>a</sup> 1983-85

	1983	1984	1985	1983-85 Increase <sup>b</sup>	
				Amount	Percent
Average malpractice cost per inpatient day	\$8.03	\$9.68	\$11.01	\$2.98	37
Average annual malpractice cost per bed	\$2,312	\$2,674	\$3,160	\$848	37

<sup>a</sup>To determine the average annual malpractice cost per bed, we computed the daily occupied bed rate (the total number of inpatient days divided by 365) and increased that number by one bed for every 2,000 outpatient visits (emergency room visits were counted as outpatient visits). This number was divided into the hospital's total annual malpractice insurance costs.

<sup>b</sup>Sampling errors for the amount and percentage of increase are not presented in appendix IV, but they are comparable to the errors for the estimated costs.

As shown in table 9, 65 percent of California hospitals had increases in inpatient day malpractice insurance costs of 10 to 99 percent from 1983 to 1985, while another 16 percent had increases of 100 percent or more.

Table 9: Estimated Distribution of  
Changes in Malpractice Insurance  
Costs per Inpatient Day From 1983 to  
1985

Percentage change	Hospitals		Cum. percent
	Number	Percent	
Increases of less than 10 or all decreases	41	19.0	19.0
+10 to 49	93	42.9	61.9
+50 to 99	49	22.5	84.4
+100 to 199	20	9.3	93.7
+200 to 299	10 <sup>b</sup>	4.4 <sup>b</sup>	98.1
+300 or more	4 <sup>b</sup>	1.8 <sup>b</sup>	99.9 <sup>a</sup>
<b>Total</b>	<b>217<sup>a</sup></b>	<b>99.9<sup>a</sup></b>	

<sup>a</sup>Does not add to adjusted universe or 100 percent due to independent rounding.

<sup>b</sup>Estimates subject to a relatively large sampling error and should be used with caution.

Note: The total number of hospitals is based on the number of responding hospitals that provided data for both 1983 and 1985 so that the percent change could be calculated.

Malpractice Insurance Rates for  
Hospitals

The cost of medical malpractice insurance with the Farmers Insurance Group of Companies, California's largest hospital insurer, decreased each year from 1980 through 1984 but increased significantly in 1985 and 1986. More specifically, the annual average premium per occupied bed for an occurrence policy<sup>a</sup> increased 78 percent, from \$836 in 1980 to \$1,485 in 1986. Table 10 shows the rates on a year-to-year basis.

<sup>a</sup>Under an occurrence policy, the insurance company is liable for any incidents that occurred during the period the policy was in force, regardless of when the claim may be filed.

California: State Officials Believe Reforms  
Have Helped to Moderate Increases in Claims  
and Premiums

Table 10: Rates per Occupied Hospital  
Bed<sup>a</sup> for Primary Coverage, 1980-86

1980	1981	1982	1983	1984	1985	1986
\$836	\$695	\$669	\$568	\$522	\$869	\$1,485

<sup>a</sup>Rates shown are those of the Farmers Insurance Group of Companies for an occurrence policy, as of January 1 each year. The policies most hospitals purchased from this insurer include a \$5,200 per-occurrence deductible. The rates shown are for different limits of coverage since the per-occurrence coverage changed significantly over time. For example, the per-occurrence coverage increased from \$110,000 in 1980 to \$500,000 in 1986.

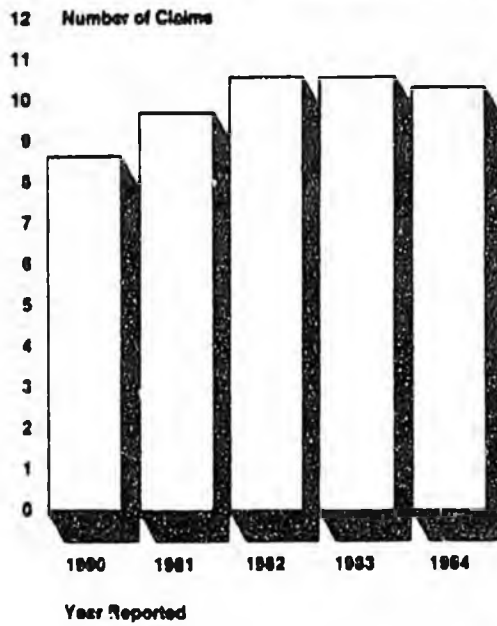
A Farmers Insurance Group of Companies official stated that rate decreases for 1981, 1982, 1983, and 1984 were due to excess premiums the company collected during the late 1970's. The excess monies were used to offset premiums charged from 1981 through 1984. Further, the Farmers Group had a contract with the California Hospital Association to provide insurance to Association members at an agreed-upon rate. In this respect, the Farmers Group established a member's reserve account for excess premiums to be used to dampen premium swings for member hospitals. The account had grown to \$41 million by 1981, and this enabled the company to offer premium reductions for the years 1981 through 1984. However, by the latter part of 1984, member reserves dropped sharply. This necessitated premium increases in 1985 and 1986. Also, in 1984 the California Hospital Association ended its contract with the Farmers Group.

Frequency of Claims

The combined claims experience for insurers of California's hospitals (The Farmers Insurance Group of Companies, the St. Paul Company, and the Association of California Hospital Districts) indicated that the frequency of claims reported per 100 occupied hospital beds increased 17 percent, from 8.6 claims in 1980 to 10.1 in 1984, as shown in figure 4.

California: State Officials Believe Reforms  
Have Helped to Moderate Increases in Claims  
and Premiums

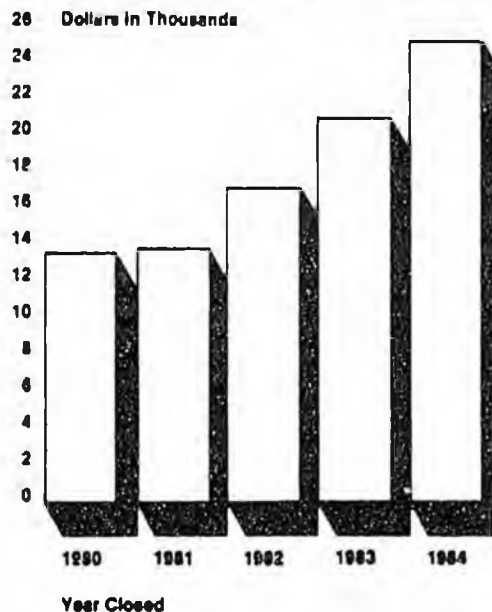
Figure 3: Frequency of Claims per 100  
Occupied Hospital Beds, 1980-84



Size of Awards/Settlements

The average paid claim against California hospitals increased 91 percent, from \$13,025 in 1980 to \$24,874 in 1984, as shown in figure 4.

Figure 4: Average Paid Claim for  
Hospitals, 1980-84



Cost to Investigate and Defend  
Claims

The combined data of the California hospital insurers shows that the average cost to investigate and defend claims closed against hospitals increased from \$3,422 in 1980 to \$5,608 in 1984—64 percent.

In 1984, 30 percent of claims against California hospitals were closed with no expense to the companies, and 30 percent were closed with only the costs incurred to investigate and defend the claim.

Major Medical  
Malpractice  
Problems—Current  
and Future

Major current or future malpractice problems in California identified by three or more of interest groups we surveyed<sup>7</sup> related to the following:

- Cost of medical malpractice liability insurance.
- Size of awards/settlements for medical malpractice claims.
- Legal expenses/attorney fees for medical malpractice claims.
- Individual physician actions to reduce or prevent medical malpractice claims.

<sup>7</sup>Our methodology for obtaining the views of major interest groups and for analyzing their responses is described in GAO/IIRD-87-21, pp. 10-11. The specific interest groups for California are shown in appendix II of this report.

---

**Cost of Malpractice  
Insurance**

Most physician organizations, the California Hospital Association, and malpractice insurers believed the high cost of basic and excess liability coverage for physicians is a major problem.

The Cooperative of American Physicians commented that higher malpractice insurance costs are due to increased numbers of claims filed and excessive malpractice verdicts. The Association of California Hospital Districts cited the unprofitability of the medical malpractice insurance business caused by excessive costs of claims. The California Society of Plastic Surgeons commented:

"... malpractice premiums approximate 20 to 25 [percent] of the average physician's net take home [pay]. Without relief the next 5 years will find this trend accelerating. This is true of excess liability insurance as well as basic and [tail coverage]. Hospitals will face the same problem, as will the insurance carriers."

An official of the California Hospital Association told us that hospitals were seeing a dramatic increase in the cost of excess malpractice insurance coverage over \$1 million.<sup>8</sup>

---

**Size of Awards and  
Settlements for Malpractice  
Claims**

Excessive malpractice awards/settlements in relation to economic costs arising from injuries are viewed by the physician group, the California Hospital Association, and malpractice insurers as a major problem that will continue over the next 5 years.

Officials of the California Hospital Association told us that they believe awards are based on emotion rather than on hard data on economic costs. They believed the legislative cap on pain and suffering should eliminate some of this.

The California Society of Plastic Surgeons said that "while obviously damaged individuals should be compensated, it seems inappropriate to make every injured person an instant millionaire."

Also, the Cooperative of American Physicians said "juries have become desensitized to the value of the dollar and find multimillion dollar verdicts common."

---

<sup>8</sup>We refer to the basic level of insurance liability coverage as primary and the coverage above the basic level as excess or above-primary coverage.

---

### Legal Expenses and Attorney's Fees for Malpractice Claims

The physician group, California Hospital Association, and malpractice insurer group expressed the opinion that legal costs associated with defending malpractice claims are excessive. They believed this was a major problem that will also occur into the next 5 years. An official of The Doctors' Company said that about 45 percent of the amount paid on its claims was consumed by defense and claims handling costs.

The California Hospital Association stated that "when the costs of defending cases is equal to or greater than amounts paid to claimants, legal costs are far out of line with the intent of the judicial system."

The Association of California Hospital Districts commented "the system is inefficient with too small a percentage of the total dollar spent going to the injured party." An official of Professional Risk Management of California, Inc., believed an ominous trend exists in escalating legal costs, for both the plaintiff and the defendant. Officials from the California Hospital Association also said that costs to defend and to pursue claims are entirely too high compared to the amount paid to the injured party.

---

### Incentives to Practice Defensive Medicine

California's physician group, hospital association, and malpractice insurer group stated that there are strong incentives for physicians to perform medically unnecessary tests or treatments to reduce their risk of liability. The California Society of Pathologists stated that "the malpractice crisis has caused physicians to practice defensive medicine and thereby increase the cost of health care."

The Farmers Insurance Group of Companies commented that physicians have strong incentives to practice defensive medicine. They said:

"... attorneys have advised physicians that they must protect themselves against allegations of misdiagnosis because of their failure to perform certain tests which were readily available"

The Physicians and Surgeons Underwriters Corporation commented that "the threat of legal action has caused M.D.s and hospitals to overreact in practicing defensive medicine."

An official of The Doctors' Company said:

"Defensive medicine is very real, but it is most difficult to quantify. The decisions of physicians regarding tests (not so much for treatments) is a conscious act of the doctor, resulting from a number of factors at work on his decision making process

such as the complaints of the patient or findings on physical examination. Others are a complex combination of subconscious influences that are a distillation of the physician's experience, education, and of the social and legal pressures that bear upon him."

Professional Risk Management of California, Inc. commented:

"... there is a substantial degree of medicine which is now practiced for the sake of legal protection rather than medical or diagnostic necessity. This drives up costs of health care and does represent a serious problem."

NORCAL Mutual Insurance Company expressed the following opinion:

"It may be an overstatement to opine that performance of 'unnecessary' tests is a substantial problem. However, the threat of a lawsuit arising from an untoward medical result encourages physicians to try everything in the dual effort of leaving no stone unturned in treating a patient and protecting the flanks, should a disappointed patient turn litigious."

---

## Solutions to Malpractice Problems

There was no agreement among three or more of the interest groups we surveyed in California for any specific solution to address current or future medical malpractice problems.

---

## Role of the Federal Government

Most organizations surveyed did not want federal involvement in the medical malpractice area. Officials of the California Medical Association, California Hospital Association, and three malpractice insurance companies we visited thought medical malpractice problems should be resolved at the state level.

The State of California Department of Insurance, however, strongly supported federal action to establish a national policy regarding compensation of medically induced injuries and commented that "national guidelines as to what is fair and reasonable would be helpful."

The California Hospital Association strongly supported federal action to establish a mechanism to provide financial incentives and/or penalties to encourage states to take certain actions. An official of the association commented that other states may obtain substantial benefits from enacting legislation similar to the California act which limits payments for noneconomic losses and contingency fees and considers collateral source payments.



# Medical Malpractice Insurers Requested to Provide Statistical Data for California

	Provided data for		Did not provide requested data
	Physicians	Hospitals	
Association of California Hospital Districts		X	
Cooperative of American Physicians	X		
The Farmers Insurance Group of Companies		X	
Medical Insurance Exchange of California			X
NORCAL Mutual Insurance Company	X		
Physician and Surgeons Underwriters Corporation	X		
Professional Risk Management of California, Inc.	X <sup>a</sup>	X <sup>a</sup>	
Southern California Physicians Insurance Exchange			X
St. Paul Fire and Marine Insurance Company		X	
The Doctors' Company	X		

<sup>a</sup>Data not included in our data base due to several missing data elements

# Organizations Receiving GAO Questionnaire for California

Completing questionnaire	Not completing questionnaire
<b>Physician group:</b>	
California Medical Association	California Psychiatric Association
California Society of Pathologists	California Association of Neurological Surgeons
California Radiological Society	California College of Surgeons (Northern and Southern Divisions)
District IX, American College of Obstetricians and Gynecologists	California Orthopedic Association
California Society of Plastic Surgeons	California Association of Ophthalmology
American Academy of Pediatrics, California District	
American College of Physicians, Northern California	
American College of Physicians, Southern California	
California Academy of Family Physicians	
California Society of Anesthesiology	
<b>Hospital association:</b>	
California Hospital Association	
<b>Bar association:</b>	
None	California Bar Association
<b>Trial lawyers:</b>	
California Trial Lawyers Association	
<b>Malpractice insurers:</b>	
The Farmers Insurance Group of Companies	St. Paul Fire and Marine Insurance Company
Physicians and Surgeons Underwriters Corporation	Southern California Physicians Insurance Exchange
The Doctors' Company	
Association of California Hospital Districts	
Cooperative of American Physicians	
NORCAL Mutual Insurance Company	
Medical Insurance Exchange of California	
Professional Risk Management of California, Inc.	
<b>Insurance department:</b>	
State of California, Department of Insurance	

# Number of California Hospitals in the Universe, GAO Sample, and Survey Response

Number of hospitals		Hospitals completing questionnaire	
Universe <sup>a</sup>	Sample	Number	Percent
483	113	56	50

<sup>a</sup>1983 data

# Estimated Hospital Data and Related Sampling Errors for Policy Years 1983, 1984, and 1985

**Table IV.1: Hospital Malpractice Insurance Costs and Related Sampling Errors by Type of Expenditure**

Dollars in millions

Expenditure	1983		1984		1985	
	Amount	Sampling error <sup>a</sup>	Amount	Sampling error <sup>a</sup>	Amount	Sampling error <sup>a</sup>
<b>Total costs</b>	<b>\$75.4</b>	<b>\$9.2</b>	<b>\$82.9</b>	<b>\$11.2</b>	<b>\$98.6</b>	<b>\$13.8</b>
Contributions to self-insurance trust funds	5.6	5.2	7.3	5.1	12.1	7.5
Premiums for purchased insurance	67.3	11.2	72.2	13.3	83.0	16.4
Uninsured losses	2.5	8	3.5	1.6	3.4	1.4

<sup>a</sup>Sampling errors are stated at the 95-percent confidence level.

Note: Detail may not add to total due to independent estimation. The adjusted universe of hospitals to which the estimated amounts relate was 216 in 1983, 1984, and 1985. The adjusted universe is that portion of the total universe based on the sample response rate for which we can estimate data.

**Table IV.2: Distribution of Annual Malpractice Insurance Costs and Related Sampling Errors for Hospitals**

Figures in percents

Annual cost	1983		1985	
	Hospitals	Sampling error <sup>a</sup>	Hospitals	Sampling error <sup>a</sup>
Less than \$10,000	0	0.0	0	0.0
\$10,000 to \$24,999	0	0.0	0	0.0
\$25,000 to \$49,999	13.9	5.0	11.7	3.7
\$50,000 to \$99,999	8.7	7.3	4.4 <sup>b</sup>	5.0
\$100,000 to \$249,999	26.7	10.3	25.5	10.6
\$250,000 to \$499,999	29.6	10.0	26.7	10.9
\$500,000 to \$999,999	14.9	5.5	23.4	7.5
\$1 million or more	6.2	3.4	8.2	4.1

<sup>a</sup>Sampling errors are stated at the 95-percent confidence level.

<sup>b</sup>Estimate subject to a relatively large sampling error and should be used with caution.

Note: The adjusted universe of hospitals was 216 in 1983 and 1985.

**Table IV.3: Average Malpractice Insurance Costs per Inpatient Day and Related Sampling Errors**

1983		1984		1985	
Cost per day	Sampling error <sup>a</sup>	Cost per day	Sampling error <sup>a</sup>	Cost per day	Sampling error <sup>a</sup>
\$8.03	\$1.40	\$9.68	\$1.83	\$11.01	\$1.70

<sup>a</sup>Sampling errors are stated at the 95-percent confidence level.

**Table IV.4: Average Annual Malpractice Insurance Costs per Bed and Related Sampling Errors**

1983		1984		1985	
Cost per bed	Sampling error <sup>a</sup>	Cost per bed	Sampling error <sup>a</sup>	Cost per bed	Sampling error <sup>a</sup>
\$2,312	\$336	\$2,674	\$361	\$3,160	\$410

<sup>a</sup>Sampling errors are stated at the 95-percent confidence level.

Appendix IV  
 Estimated Hospital Data and Related  
 Sampling Errors for Policy Years 1983, 1984,  
 and 1985

**Table IV.5: Distribution of Changes in  
 Malpractice Insurance Costs per  
 Inpatient Day From 1983 to 1985 and  
 Related Sampling Errors**

Figures in percents

Changes	Hospitals	Sampling error <sup>a</sup>
Increases of less than 10% or decreases	19.0	10.2
Increases of 10% to 49%	42.9	12.4
Increases of 50% to 99%	22.5	10.5
Increases of 100% to 199%	9.3	7.5
Increases of 200% to 299%	4.4 <sup>b</sup>	5.0
Increases of 300% or more	1.8 <sup>b</sup>	2.9

<sup>a</sup>Sampling errors are stated at the 95-percent confidence level

<sup>b</sup>Estimates subject to a relatively large sampling error and should be used with caution

Note: The adjusted universe of hospitals was 216

FILE NO.  
05-190.056-010

December 1986

# MEDICAL MALPRACTICE

## Case Study on Arkansas



# Preface

December 31, 1986

Representative John Edward Porter and Senator John Heinz, Chairman, Senate Special Committee on Aging, asked GAO to identify the actions taken by the states to address medical malpractice insurance problems and to determine changes in insurance costs, the number of claims filed, and the average amount paid per claim. These case studies discuss the situation in each state.

This study on Arkansas focuses on the views of various interest groups on perceived problems, actions taken by the state to deal with the problems, the results of these actions, and the need for federal involvement. A summary of the findings for all six case studies can be found in our overall report, Medical Malpractice: Six State Case Studies Show Claims and Insurance Costs Still Rise Despite Reforms (GAO/HRD-87-21, December 31, 1986).



Richard L. Fogel  
Assistant Comptroller General  
for Human Resources Programs

---

# Overview

---

Although medical malpractice insurance rates have increased since 1980, the cost of malpractice insurance for physicians and hospitals in Arkansas was not viewed as a major current problem by the six interest groups we surveyed. Major problems were expected to develop in the future, however, regarding the cost of malpractice insurance, the availability of such insurance, legal expenses/attorney's fees for malpractice claims, and physician actions to reduce or prevent malpractice claims. Although the state enacted some tort reforms to address medical malpractice problems, the interest groups we surveyed believed the reforms have not had much effect. There was little support for federal involvement in the medical malpractice situation in Arkansas. Most groups believe that problems should be addressed at the state rather than the federal level.

# Contents

---

Preface		1
---------	--	---

---

Overview		2
----------	--	---

---

Arkansas: Few Current Concerns but Future Problems Expected		6
Background		6
Medical Malpractice Situation in the Mid-1970's		7
Response to Problems		8
Effect of Arkansas Tort Reforms		9
Key Indicators of the Situation Since 1980		9
Major Medical Malpractice Problems—Current and Future		19
Solutions to Malpractice Problems		21
Role of the Federal Government		21

---

Appendixes		
Appendix I: Medical Malpractice Insurers Requested to Provide Statistical Data for Arkansas		22
Appendix II: Organizations Receiving GAO Questionnaire for Arkansas		23
Appendix III: Number of Arkansas Hospitals in the Universe, GAO Sample, and Survey Response		24
Appendix IV: Estimated Hospital Data and Related Sampling Errors for Policy Years 1983, 1984, and 1985		25

---

Tables		
Table 1: Number of Nonfederal Patient Care Physicians in Arkansas in Selected Specialties as of December 31, 1985		6
Table 2: Cost of Insurance for Selected Specialties, 1980 and 1986		11
Table 3: Frequency of Claims per 100 Physicians for Selected Specialties, 1980-84		13
Table 4: Average Paid Claim for Selected Specialties, 1980 and 1984		14
Table 5: Estimated Hospital Malpractice Insurance Costs by Type of Expenditure, 1983-85		15
Table 6: Estimated Distribution of Annual Malpractice Insurance Costs for Hospitals, 1983 and 1985		15

---

Table 7: Estimated Average Hospital Malpractice Insurance Costs per Inpatient Day and per Bed, 1983-85	16
Table 8: Estimated Distribution of Changes in Malpractice Insurance Costs per Inpatient Day From 1983 to 1985	16
Table IV.1: Hospital Malpractice Insurance Costs and Related Sampling Errors by Type of Expenditure	25
Table IV.2: Distribution of Annual Malpractice Insurance Costs and Related Sampling Errors for Hospitals	25
Table IV.3: Average Malpractice Insurance Costs per Inpatient Day and Related Sampling Errors	25
Table IV.4: Average Annual Malpractice Insurance Costs per Bed and Related Sampling Errors	25
Table IV.5: Distribution of Changes in Malpractice Insurance Costs per Inpatient Day From 1983 to 1985 and Related Sampling Errors	26

---

**Figures**

Figure 1: Frequency of Claims per 100 Physicians, 1980-84	12
Figure 2: Average Paid Claim for Physicians, 1980-84	13
Figure 3: Frequency of Claims per 100 Occupied Hospital Beds, 1980-84	17
Figure 4: Average Paid Claim for Hospitals, 1980-84	18

# Arkansas: Few Current Concerns but Future Problems Expected

## Background

### Population, Physician, and Hospital Characteristics

With a population of 2.3 million, Arkansas is the 33rd most populous state. The population is almost equally divided between urban and rural areas.<sup>1</sup> Arkansas had 3,532 physicians as of December 31, 1985,<sup>2</sup> and 92 nonfederal community hospitals with a total of 11,394 beds in 1984.<sup>3</sup> A total of 3,017 physicians were providing patient care—2,504 were office-based and 513 were hospital-based. Table 1 shows the distribution of patient care physicians among 13 selected specialties.

**Table 1: Number of Nonfederal Patient Care Physicians in Arkansas in Selected Specialties as of December 31, 1985**

	Office-based practice	Hospital-based practice		Total
		Residents	Full-time physician staff	
General practice	774	80	11	865
Internal medicine	244	72	7	323
Pediatrics	115	42	3	160
Psychiatry	78	13	21	112
Pathology	60	9	7	76
Radiology	73	1	5	79
Ophthalmology	102	15	1	118
General surgery	185	35	7	227
Anesthesiology	94	28	2	124
Plastic surgery	12	0	0	12
Orthopedic surgery	103	19	4	126
Obstetrics/gynecology	159	16	3	178
Neurosurgery	19	8	2	29

The occupancy rate of the state's community hospitals averaged 62 percent in 1984. About 42 percent of the hospitals were nongovernment, not-for-profit; 41 percent were state and locally owned; and 17 percent were investor-owned. The most common hospital size was 50 to 99 beds. The 31 hospitals of that size accounted for 20 percent of the hospital beds in the state. Arkansas has three hospitals with 500 or more beds each, which accounted for 17 percent of the beds.

<sup>1</sup>Population and ranking are as of July 1, 1984 (preliminary), and the urban, rural mix is as of July 1, 1980, from *Statistical Abstract of the United States, 1986*, 106th Edition, pp. 10 and 12.

<sup>2</sup>*Physician Characteristics and Distribution in the U.S., 1986 Edition*, Department of Data Release Services, Division of Survey and Data Resources, American Medical Association (forthcoming).

<sup>3</sup>*Hospital Statistics, 1985 Edition*, American Hospital Association, p. 48.

---

## Regulation of Insurance Rates and Description of Medical Malpractice Insurers

Before 1979, Arkansas was a "prior approval state." Insurers were required to file proposed rates and obtain the approval of the state insurance department before the rates could be used, according to an Arkansas Insurance Department official. Since 1979, Arkansas has been a "file and use" state. Each insurer must now file rates with the state insurance department before the effective date; however, prior approval is not required before the effective date. Although the state insurance department can reject rate increases because of "excessiveness," Arkansas Insurance Department officials told us that they cannot recall ever having rejected a rate increase. They stated it is difficult to show that the rates are excessive in a file and use state.

In 1986, the two largest medical malpractice insurers of physicians in Arkansas were the St. Paul Fire and Marine Insurance Company (St. Paul Company) and the American Physicians Insurance Exchange. The St. Paul Company insures about 70 percent of the physician market. According to Arkansas Medical Society and St. Paul Company officials, the American Physicians Insurance Exchange insures most of the remaining physicians.

According to Arkansas Hospital Association officials, the St. Paul Company and the Ohio Hospital Insurance Company are the leading hospital insurers in the state. In January 1985, the St. Paul Company insured 58 Arkansas hospitals, and the Ohio Hospital Insurance Company insured 7.

In 1984, the predominately written malpractice coverage limits for Arkansas physicians were \$1 million/\$1 million. For hospital malpractice policies, the predominately written coverage limits were \$300,000/\$900,000 for policies written by the St. Paul Company and \$200,000/\$600,000 for policies written by the Ohio Hospital Insurance Company. For both hospitals and physicians, there is only one rating territory in the state.

---

## Medical Malpractice Situation in the Mid-1970's

According to an Arkansas Medical Society official, the availability of malpractice insurance was the major concern in Arkansas when Aetna, one of the two major insurers in the state, withdrew from the malpractice insurance market in 1975. The St. Paul Company was left as essentially the state's only malpractice insurer.

In late 1978, the American Physicians Insurance Exchange began writing malpractice insurance for physicians in the state, according to a

company official. An Arkansas Medical Society official stated that the effect of this company's entry into Arkansas was immediate as many physicians changed their insurance to this company in the initial years because of its lower rates. The official added that the St. Paul Company lowered its rates shortly thereafter in order to remain competitive. The same official noted that in 1983 the Medical Protective Company entered the Arkansas physician market.

## Response to Problems

The General Assembly of Arkansas created the Professional Liability Reinsurance Exchange in 1975 to assure an available market for medical malpractice insurance. The exchange consisted of all insurers writing general liability insurance in the state. Each was required to issue malpractice insurance policies in proportion to their general liability market share. The exchange was never used and was allowed to expire on March 31, 1981, because malpractice insurance had become readily available from the normal insurance market, according to Arkansas Insurance Department officials.

In 1975, a Professional Malpractice Insurance Commission was established. The Commission was to hear and rule upon any claim submitted to it which involved medical injury, death or monetary loss as a result of medical malpractice. However, similar to the Insurance Exchange, the Commission's authority was allowed to expire in 1979. According to an Arkansas Medical Society official, physicians believed the Commission did not deter frivolous claims because claims could still be taken to court, after the panel found no cause for negligence or damages.

In 1979, the General Assembly of Arkansas enacted the following tort reforms related to medical malpractice:

- Burden of proof. In any action for medical injury, the plaintiff has the burden of proving that the medical standards of his locality were not met by the provider. Also, when the medical provider failed to supply adequate information to obtain the informed consent of the injured person, the plaintiff has the burden of proving that the treatment was performed in other than an emergency situation and that the medical provider did not supply the type of information that would customarily have been given a patient by other medical providers with similar training and experience in the locality in which the medical provider practices.
- Qualifications for expert testimony. In any action for medical injury, no medical care provider should be required to give expert testimony

against himself at a trial, and no expert witness is permitted to give testimony if his compensation depends on the outcome of the case.

- Statute of limitations. All actions involving medical injury shall be commenced within 2 years from the date the cause of the injury occurs, with the exception of the subsequent discovery of a foreign object, in which case, the action shall be commenced within 1 year from date of discovery or the date the foreign object should reasonably have been discovered. With regard to minors, legal action must be commenced before the 19th birthday, provided that the injury occurred when the individual was under the age of 18. Any person who had been adjudicated incompetent at the time of the injury has 1 year after the disability is removed to commence an action.
- Notice of intent to sue. No legal action may be started until at least 60 days after the medical provider is given written notice of alleged injuries and the damages claimed.
- Elimination of ad damnum. In any action for medical injury, the pleading shall not specify the amount of damages claimed but instead that the damages are within the minimum or maximum of that particular court.
- Damages recoverable. In any verdict for the plaintiff, damages may be awarded for both economic losses and pain and suffering and other noneconomic loss; however, the award must separately state the amounts for both. Also, the court, at the request of either party, may order that awards for future damages exceeding \$100,000 be paid in periodic payments rather than a lump sum.
- Baseless pleadings. If any action for medical injury is intentionally brought without reasonable cause and found to be untrue, the plaintiff shall pay the reasonable costs incurred by the defendant.

## Effect of Arkansas Tort Reforms

None of the interest groups we surveyed believed that the tort reforms enacted by the state have had any major effect.

## Key Indicators of the Situation Since 1980

Malpractice insurance premiums for physicians and hospitals have increased moderately during recent years. For example, the selected physician specialties experienced a median rate of increase of 50 percent from 1980 to 1986. Hospital rates increased by 51 percent over the same period. The frequency of claims per 100 physicians increased from 6.6 in 1980 to 8.4 in 1981 and then remained relatively stable.

1981 to 1984. The average paid claim for physicians increased substantially between 1980 and 1984—from \$31,619 to \$51,685. The frequency of claims against hospitals was 1.2 claims per 100 occupied beds in both 1980 and 1984, but the average paid claim increased from \$12,000 to \$18,345. The insurers' average cost to investigate and defend claims also increased substantially for both physician and hospital insurers.

## Physicians

### Cost of Malpractice Insurance

As of January 1986, there was a wide variation in malpractice insurance rates among different physician specialties in Arkansas. For example, the St. Paul Company's annual premium for \$1 million/\$1 million claims-made<sup>4</sup> coverage ranged from \$1,323 for general practice (no surgery) and internal medicine (no surgery), pediatrics (no surgery), psychiatry, and pathology to \$12,612 for neurosurgery. Table 2 shows the variation in premiums among the selected specialties.

As also shown in table 2, the rate of increase in the medical malpractice premiums has not been uniform among physician specialties. High-risk specialties, such as neurosurgery and obstetrics/gynecology, have experienced the highest percentage increases. Since 1980, neurosurgery and obstetrics/gynecology have experienced 136 percent and 147 percent increases, respectively, while the other selected specialties experienced increases ranging from 22 to 88 percent. The median increase was 80 percent between 1980 and 1986.

<sup>4</sup>A claims-made policy covers malpractice events that occur after the effective date of the coverage and for which claims are made during the policy period.

Arkansas: Few Current Concerns but Future Problems Expected

Table 2: Cost of Insurance<sup>a</sup> for Selected Specialties, 1980 and 1986

Specialty	1980	1986	Percent increase 1980-86
Ophthalmology/surgery	\$2,050	\$2,494	22
Orthopedic surgery	5,337		7,985
General practice (minor surgery)	1,204	1,907	58
Internal medicine (minor surgery)	1,204	1,907	58
Radiology	1,204	1,907	58
Pediatrics (minor surgery)	1,204	1,907	58
Anesthesiology	3,366	5,407	61
Plastic surgery	3,366	6,063	80
General surgery	3,366	6,063	80
Internal medicine (no surgery)	704	1,323	88
Psychiatry	704	1,323	88
Pathology	704	1,323	88
General practice (no surgery)	704	1,323	88
Pediatrics (no surgery)	704	1,323	88
Neurosurgery	5,337	12,612	136
Obstetrics/gynecology	4,022	9,940	147

<sup>a</sup>Rates shown are those of the St. Paul Company for a \$1 million/\$1 million claims-made policy as of January 1 each year.

Frequency of Claims

The combined claims experience for the St. Paul Company and the American Physicians Insurance Exchange indicated that the frequency of claims per 100 physicians in Arkansas increased from 6.6 claims in 1980 to 8.6 claims in 1984—30 percent—but as shown in figure 1, the frequency of claims was relatively constant between 1981 and 1984.

# **CORRECTION**

**THIS DOCUMENT  
HAS BEEN REPHOTOGRAPHED  
TO ASSURE LEGIBILITY**

Arkansas: Few Current Concerns but Future Problems Expected

Table 2: Cost of Insurance<sup>a</sup> for Selected Specialties, 1980 and 1986

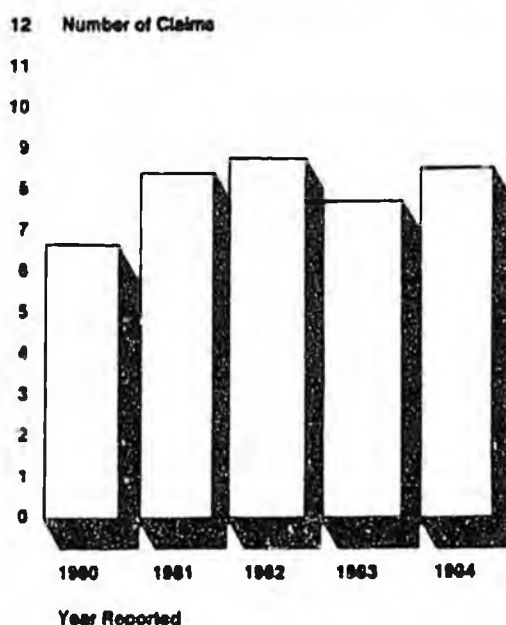
Specialty	1980	1986	Percent increase 1980-86
Ophthalmology/surgery	\$2,050	\$2,494	22
Orthopedic surgery	5,337		7985
General practice (minor surgery)	1,204	1,907	58
Internal medicine (minor surgery)	1,204	1,907	58
Radiology	1,204	1,907	58
Pediatrics (minor surgery)	1,204	1,907	58
Anesthesiology	3,366	5,407	61
Plastic surgery	3,366	6,063	80
General surgery	3,366	6,063	80
Internal medicine (no surgery)	704	1,323	88
Psychiatry	704	1,323	88
Pathology	704	1,323	88
General practice (no surgery)	704	1,323	88
Pediatrics (no surgery)	704	1,323	88
Neurosurgery	5,337	12,612	136
Obstetrics/gynecology	4,023	9,940	147

<sup>a</sup>Rates shown are those of the St. Paul Company for a \$1 million/\$1 million claims-made policy as of January 1 each year

Frequency of Claims

The combined claims experience for the St. Paul Company and the American Physicians Insurance Exchange indicated that the frequency of claims per 100 physicians in Arkansas increased from 6.6 claims in 1980 to 8.6 claims in 1984—30 percent—but as shown in figure 1, the frequency of claims was relatively constant between 1981 and 1984.

Figure 1: Frequency of Claims per 100 Physicians, 1980-84



As shown in table 3, in 1984 the frequency of claims per 100 physicians for 13 selected specialties ranged from zero for radiologists and psychiatrists to 59 for plastic surgeons. The percentage change from 1980 to 1984 varied from specialty to specialty. The most dramatic increase in claims frequency was the 446-percent increase for plastic surgeons—from 10.8 claims in 1980 to 59 claims in 1984.

Arkansas: Few Current Concerns but Future Problems Expected

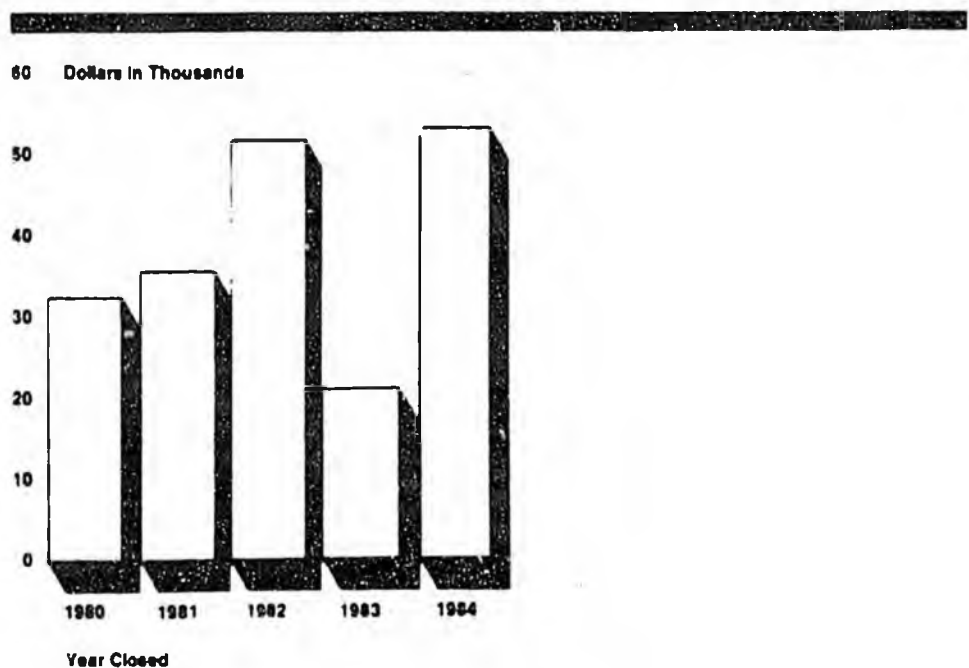
Table 3: Frequency of Claims per 100 Physicians for Selected Specialties, 1980-84

Specialty	1980	1981	1982	1983	1984	Percent increase 1980-84
General practice	7.1	4.3	3.4	5.4	4.2	(41)
Internal medicine	3.6	4.5	2.4	6.0	0.7	(81)
Pediatrics	2.8	7.2	1.1	2.0	2.0	(29)
General surgery	12.9	17.4	23.2	17.3	19.0	47
Neurosurgery	15.6	6.4	39.7	6.6	12.3	(21)
Ophthalmology/surgery	2.7	4.9	5.0	1.3	5.1	89
Orthopedic surgery	12.8	18.0	32.6	14.1	22.2	73
Plastic surgery	10.8	44.4	25.8	20.0	59.0	446
Obstetrics/ gynecology	20.3	30.4	28.1	24.5	28.4	40
Radiology	0	0	13.8	0	0	0
Psychiatry	4.7	3.6	9.3	1.4	0	(100)
Anesthesiology	8.1	1.7	2.3	9.2	11.7	44
Pathology	5.0	3.6	1.7	1.8	13.4	168

Size of Awards/Settlements

As shown in figure 2, the average paid claim for physicians in Arkansas increased 63 percent between 1980 and 1984—from \$31,619 in 1980 to \$51,685 in 1984.

Figure 2: Average Paid Claim for Physicians, 1980-84



As shown in table 4, no clear trend is evident in the average paid claim for the selected specialties. Because the number of physicians in any one specialty is relatively small, the base for spreading total claims paid is small. As a result, a few large claims paid in a given year for a given specialty could have a significant effect on the average paid claim for that specialty that year.

**Table 4: Average Paid Claim for Selected Specialties, 1980 and 1984**

	1980	1984
All physicians	\$31,619	\$51,685
<b>Specialty:</b>		
General practice	0	7,500
Internal medicine	0	30,250
Pediatrics	35,000	0
General surgery	102,000	35,000
Neurosurgery	0	20,000
Ophthalmology/surgery	0	0
Orthopedic surgery	0	120,600
Plastic surgery	0	0
Obstetrics/gynecology	0	81,370
Radiology	0	0
Psychiatry	0	0
Anesthesiology	0	17,500
Pathology	0	19,000

**Cost to Investigate and Defend Claims**

The average cost to investigate and defend claims against Arkansas physicians insured by the St. Paul Company and the American Physicians Insurance Exchange increased from \$2,714 in 1980 to \$5,269 in 1984—a 94-percent increase.

The percentage of claims closed with costs only to investigate and defend the claim remained fairly constant during the period 1980-84. However, the portion of claims closed with an indemnity paid increased from 18 percent in 1980 to 32 percent in 1984. Over this period, the percentage of claims closed with no expense decreased from 41 to 28.

Hospitals

Cost of Malpractice Insurance

As shown in table 5, the total estimated malpractice insurance costs for hospitals in Arkansas<sup>4</sup> increased from \$1.8 million in 1983 to \$2.2 million in 1985—22 percent.

**Table 5: Estimated Hospital Malpractice Insurance Costs by Type of Expenditure, 1983-85**

Expenditure	1983	1984	1985	1983-85 increase <sup>a</sup>	
				Amount	Percent
<b>Total</b>	<b>\$1.8</b>	<b>\$1.8</b>	<b>\$2.2</b>	<b>\$0.4</b>	<b>22</b>
Contributions to self-insurance trust funds	5	4	7	2	40
Premiums for purchased insurance	1.3	1.4	1.5	2	15
Uninsured losses	0	0	0	0	0

<sup>a</sup>Sampling errors for the amount and percentage of increase are not presented in appendix IV, but they are comparable to the errors for the estimated costs.

Note: Detail may not add to total due to independent estimation

As shown in table 6, 65 percent of the hospitals had total annual malpractice insurance costs of less than \$25,000 in 1985. No Arkansas hospital had annual insurance costs greater than \$500,000 in 1983 or 1985

**Table 6: Estimated Distribution of Annual Malpractice Insurance Costs for Hospitals, 1983 and 1985**

Annual costs	1983			1985		
	Number	Percent	Cum. Percent	Number	Percent	Cum. Percent
Less than \$10,000	16	35.6	35.6	13	26.1	26.1
\$10,000 to \$24,999	13	30.4	66.0	20	38.5	64.6
\$25,000 to \$49,999	7	16.1	82.1	8	16.1	80.7
\$50,000 to \$99,999	3	6.0	88.1	3	5.7	86.4
\$100,000 to \$249,999	3	7.4	95.5	6	11.6	98.0
\$250,000 to \$499,999	2	4.5	100.0	1	2.0	100.0
\$500,000 to \$999,999	0	0.0	.	0	0.0	.
\$1 million or more	0	0.0	.	0	0.0	.
<b>Total</b>	<b>44</b>	<b>100.0</b>		<b>51</b>	<b>100.0</b>	

Note: The total number of hospitals each year is based on the number of responding hospitals that provided the relevant data for that year

<sup>4</sup>See appendix III of this report for information on the number of Arkansas hospitals in the sample, and the survey response. Unless otherwise indicated, the estimates presented in this study are also included with sampling errors in tables IV.1 through IV.5. Also, see GAO HRHS, p. 11, app. II, for methodology for obtaining and analyzing hospital cost data.

**Arkansas: Few Current Concerns but Future Problems Expected**

As shown in table 7, from 1983 to 1985 the estimated average malpractice insurance cost per inpatient day increased 38 percent, while the annual malpractice cost per bed increased 34 percent.

**Table 7: Estimated Average Hospital Malpractice Insurance Costs per Inpatient Day and per Bed,<sup>a</sup> 1983-85**

	1983	1984	1985	1983-85 increase <sup>b</sup>	
				Amount	Percent
Average malpractice cost per inpatient day	\$1.09	\$1.24	\$1.50	\$ .41	38
Average annual malpractice cost per bed	\$353	\$418	\$474	\$121	34

<sup>a</sup>To determine the average annual malpractice cost per bed, we computed the daily occupied bed rate (the total number of inpatient days divided by 365) and increased that number by one bed for every 2,000 outpatient visits (emergency room visits were counted as outpatient visits). This number was divided into the hospital's total annual malpractice insurance cost.

<sup>b</sup>Sampling errors for the amount and percentage of increase are not presented in appendix IV but they are comparable to the errors for the estimated costs.

Our estimates indicate that the changes in inpatient day insurance costs varied considerably among the hospitals in the state. As shown in table 8, from 1983 to 1985, 30 percent of the hospitals had increases of less than 10 percent or decreases in inpatient day malpractice insurance costs, 35 percent had increases of 10 to 49 percent, and 35 percent had increases of 50 percent or more.

**Table 8: Estimated Distribution of Changes in Malpractice Insurance Costs per Inpatient Day From 1983 to 1985**

Percentage change	Hospitals		Cum. Percent
	Number	Percent	
Increases of less than 10 or all decreases	13	30.3	30.3
+10 to 49	15	35.1	65.4
+50 to 99	11	25.5	90.9
+100 to 199	4	9.2	100.1
+200 to 299	0	0	100.1
+300 or more	0	0	100.1
<b>Total</b>	<b>43<sup>a</sup></b>	<b>100.1<sup>a</sup></b>	

<sup>a</sup>Does not add to adjusted universe or 100 percent due to independent rounding.  
 Note: The total number of hospitals is based on the number of responding hospitals that provided data for both 1983 and 1985 so that the percentage change could be calculated.

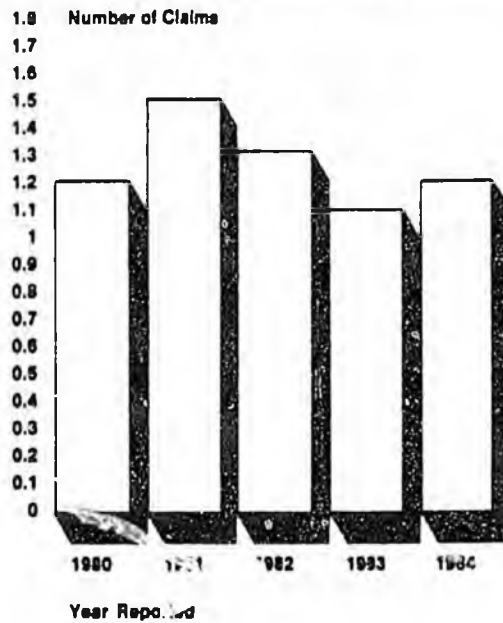
**Malpractice Insurance Rates for Hospitals**

For \$300,000/\$900,000 claims-made coverage, the St. Paul Company hospital malpractice insurance rates increased from \$173 per occupied bed in 1980 to \$262 in 1986—51 percent.

Frequency of Claims

Based on the combined claims experience shown in figure 3 for the two largest insurers of Arkansas hospitals—the St. Paul Company and the Ohio Hospital Insurance Company—except for 1981, the frequency of claims filed against Arkansas hospitals remained relatively constant around 1.2 claims per 100 occupied beds from 1980 to 1984.

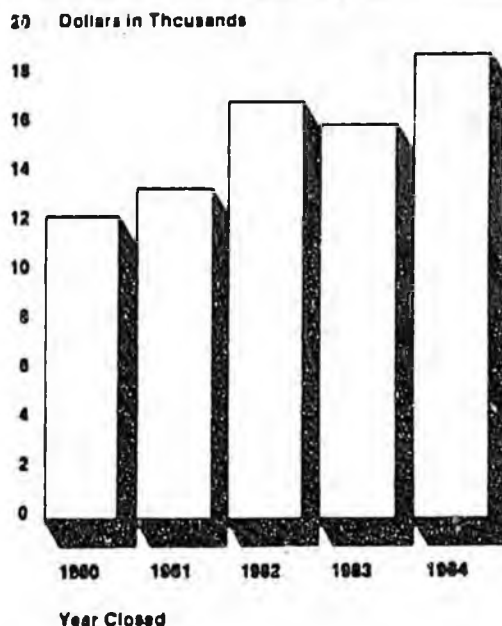
Figure 3: Frequency of Claims per 100 Occupied Hospital Beds, 1980-84



Size of Awards/Settlements

Based on the combined claims experience of the St. Paul Company and the Ohio Hospital Insurance Company shown in figure 4, the average paid claim against Arkansas hospitals increased from \$12,000 in 1980 to \$18,345 in 1984.

Figure 4: Average Paid Claim for Hospitals, 1980-84



Cost to Investigate and Defend Claims

The combined claims experience of the state's leading hospital insurers showed that the average cost per claim to investigate and defend claims against Arkansas hospitals almost doubled between 1980 and 1984—from \$2,263 to \$4,120.

The combined data of the leading hospital insurers in Arkansas show that the percentage of claims closed against hospitals with an indemnity decreased from 39 percent in 1980 to 26 percent in 1984. However, the percentage of claims closed with costs only to investigate and defend the claim doubled over the same period—from 14 to 28 percent. The percentage of claims closed with no expense remained relatively constant.

---

## Major Medical Malpractice Problems—Current and Future

Three or more interest groups<sup>6</sup> we surveyed perceived major current and future problems with the size of legal costs and attorney's fees for medical malpractice claims. Three or more groups also expected major problems to develop during the next 5 years concerning the cost and availability of malpractice insurance for physicians, the cost and availability of reinsurance for primary insurers, and physicians having strong incentives to perform medically unnecessary tests or treatments.

---

## Legal Expenses and Attorney's Fees for Malpractice Claims

The Arkansas Bar Association, the Arkansas Trial Lawyers Association, and the Arkansas Insurance Department believed that plaintiffs' legal costs in pursuing a claim are too high. These groups expect the problem to be a major concern in the future as well. The Arkansas Insurance Department officials stated that increased legal expenses, such as for expert witnesses and depositions, are currently a problem both for defending and pursuing a claim.

Officials of the Arkansas Trial Lawyers Association stated that many lawyers will spend \$2,000 to \$3,000 for expert review to assess the adequacy of evidence supporting a claim. They stated that malpractice suits are not a way to make money in Arkansas since a lawyer can easily spend \$5,000 to \$18,000 on such items as expert witnesses, depositions, and medical review of records. The Trial Lawyers Association said that if the amount of the fee is capped, the amount of the claim will simply be raised to cover legal expenses. An Arkansas Bar Association official stated:

"Health care providers, their insurance companies, and lawyers have made processing a patient's claim so expensive that the small case is not economically viable. But the contingency fee is not at fault. The vast majority of patients can't pay any other type of fee."

The physician group, medical malpractice insurers, and the Arkansas Insurance Department expect the high legal costs associated with defending malpractice claims to be a major problem during the next 5 years (1986-90).

## Cost of Malpractice Insurance

The physician group, the medical malpractice insurer group, and the Arkansas Insurance Department expected the cost of basic liability

---

<sup>6</sup>Our methodology for obtaining the views of major interest groups and for analyzing their views is described in GAO/HRD-87-21, pp. 10-11. The specific interest groups for Arkansas are presented in appendix II of this report.

insurance for physicians to be a major problem in the next 5 years. As was shown in table 2, physician rates have increased somewhat since 1980. Arkansas Insurance Department officials told us that relative to physicians' incomes, they believe the cost of malpractice insurance in Arkansas is still reasonable. They believe, however, that the problems with the cost of malpractice insurance will become a major future problem. They attributed their concern to an increase in the number of lawyers and lawyer advertising, an overall increase in the litigiousness of the state, and a decrease in insurers' capacity to write insurance.

Officials of the Arkansas Trial Lawyers Association pointed out that because there are now at least three carriers writing malpractice insurance in Arkansas, premiums may be going up, but not as much as in other states. An Arkansas Medical Society official stated that he has not heard outcries from physicians regarding the cost of malpractice insurance in the state, but that it may be just around the corner, because trends in Arkansas are always several years behind the rest of the country.

#### Availability of Malpractice Insurance

Major future concerns regarding the availability of insurance identified by three or more interest groups we surveyed were that

- physicians would be unable to find a source to purchase excess liability coverage and
- insurers would be unable to find a source from which to purchase sufficient reinsurance.

Specifically, the physician group, the Arkansas Hospital Association, and the Arkansas Insurance Department expected major problems to develop in the next 5 years regarding insufficient sources of excess liability coverage for physicians. The Arkansas Ophthalmological Society commented that because insurers are motivated by profitability, and because there are unknowns involved in "tail" coverage and excess liability coverage, insurers will not want to continue to assume this unknown risk. An Arkansas Hospital Association official commented that excess liability coverage will be difficult, but not impossible, to find in the future.

The Arkansas Hospital Association, the Arkansas Insurance Department, and the medical malpractice insurers believed that insufficient sources of reinsurance will be a major problem in the next 5 years. American Physicians Insurance Exchange officials stated that the

number of insurance companies providing reinsurance is decreasing and those that are, are doing so at increased costs. This, they stated, is in turn driving up the company's malpractice insurance rates.

#### Incentives to Practice Defensive Medicine

Arkansas' physician group, Hospital Association, malpractice insurers, and Insurance Department expected future problems related to the incentives for physicians to perform medically unnecessary tests or treatments to reduce their risk of liability. American Physicians Insurance Exchange officials noted that they are seeing a tendency for physicians to increase the number of tests in order to cover any possible questions at a later date. For example, they stated that they have seen the number of X-rays and electrocardiographs double, even though such tests are not warranted in many cases. They added that lawyers are encouraging physicians to perform more tests to protect themselves. The President of the Arkansas Society of Pathology stated that "common sense no longer dictates when to order tests."

#### Solutions to Malpractice Problems

To address malpractice problems, the state's hospital association, trial lawyers association, and bar association strongly supported (1) imposing sanctions or disciplinary measures against physicians and hospitals with medical malpractice histories and (2) increasing peer review of physicians' medical practices as means of addressing malpractice problems.

#### Role of the Federal Government

The Arkansas Hospital Association was the only group to express strong support for federal action. The Association strongly supported federal action to (1) establish a national policy regarding compensation for medically induced injuries, (2) establish a mechanism to provide financial incentives to states that take certain actions, (3) establish a mechanism to provide technical assistance to states and/or organizations, and (4) mandate a uniform system for resolving malpractice claims.

Officials of the Arkansas Bar Association stated that the individual states should be given time to see if they can resolve their own problems. The Arkansas Trial Lawyers Association stated that the federal government should stay out of the medical malpractice area because there is no way a uniform system can be developed because of differences in the states, people, and localities, which could cause individual judges to interpret laws differently.

# Medical Malpractice Insurers Requested to Provide Statistical Data for Arkansas

---

	Provided Data for	
	Physicians	Hospitals
American Physicians Insurance Exchange	X	
Ohio Hospital Insurance Company		X
St. Paul Fire and Marine Insurance Company	X	X

# Organizations Receiving GAO Questionnaire for Arkansas

Completing questionnaire	Not completing questionnaire
<b>Physician group:</b>	
Arkansas Medical Society	Arkansas Chapter of American Academy of Pediatrics
Arkansas Society of Pathology	Arkansas Orthopaedic Society
Arkansas Section, American College of Obstetricians and Gynecologists	Arkansas Psychiatric Society
Arkansas Society of Plastic and Reconstructive Surgeons	Arkansas Chapter, American College of Radiology
Arkansas Ophthalmological Society	Arkansas Chapter, American College of Surgeons
Association of Arkansas Neurosurgeons	Governor for Arkansas, American College of Physicians
Arkansas Academy of Family Physicians	
Arkansas Society of Anesthesiologists	
<b>Hospital association:</b>	
Arkansas Hospital Association	None
<b>Bar association:</b>	
Arkansas Bar Association	None
<b>Trial lawyers:</b>	
Arkansas Trial Lawyers Association	None
<b>Malpractice insurers:</b>	
American Physicians Insurance Exchange	St. Paul Fire and Marine Insurance Company
Mid-American Insurance Managers	
<b>State insurance department:</b>	
Arkansas Insurance Department	None

# Number of Arkansas Hospitals in the Universe, GAO Sample, and Survey Response

Number of Hospitals		Hospitals completing questionnaire	
Universe <sup>a</sup>	Sample	Number	Percent
92	44	27	61

<sup>a</sup>1983 data

# Estimated Hospital Data and Related Sampling Errors for Policy Years 1983, 1984, and 1985

**Table IV.1: Hospital Malpractice Insurance Costs and Related Sampling Errors by Type of Expenditure**

Dollars in millions

Expenditure	1983		1984		1985	
	Amount	Sampling error <sup>a</sup>	Amount	Sampling error <sup>a</sup>	Amount	Sampling error <sup>a</sup>
<b>Total costs</b>	<b>\$1.8</b>	<b>\$ .3</b>	<b>\$1.8</b>	<b>\$ .4</b>	<b>\$2.2</b>	<b>\$ .4</b>
Contributions to self-insurance trust funds	5	2	4	1	7	5
Premiums for purchased insurance	1.3	3	1.4	4	1.5	2
Uninsured losses	0	0	0	0	0	0

<sup>a</sup>Sampling errors are stated at the 95-percent confidence level

Note: Detail may not add to total due to independent estimation. The adjusted universe of hospitals to which the estimated amounts relate was 44 in 1983 and 51 in 1985. The adjusted universe is that portion of the total universe based on the sample response rate for which we can estimate data.

**Table IV.2: Distribution of Annual Malpractice Insurance Costs and Related Sampling Errors for Hospitals**

Figures in percents

Annual cost	1983		1985	
	Hospitals	Sampling error <sup>a</sup>	Hospitals	Sampling error <sup>a</sup>
Less than \$10,000	35.6	11.2	26.1	11.5
\$10,000 to \$24,999	30.4	12.2	38.5	10.3
\$25,000 to \$49,999	16.1	8.5	16.1	11.0
\$50,000 to \$99,999	6.0	0.0	5.7	3.0
\$100,000 to \$249,999	7.4	6.3	11.6	3.3
\$250,000 to \$499,999	4.5	0.0	2.0	2.2
\$500,000 to \$999,999	0	0.0	0	2.2
\$1 million or more	0	0.0	0	2.2

<sup>a</sup>Sampling errors are stated at the 95-percent confidence level

Note: The adjusted universe of hospitals was 44 in 1983 and 51 in 1985.

**Table IV.3: Average Malpractice Insurance Costs per Inpatient Day and Related Sampling Errors**

Cost per day	1983		1984		1985	
	Cost per day	Sampling error <sup>a</sup>	Cost per day	Sampling error <sup>a</sup>	Cost per day	Sampling error <sup>a</sup>
\$1.09	\$ .18	\$1.24	\$ .32	\$1.50	\$ .29	

<sup>a</sup>Sampling errors are stated at the 95-percent confidence level

**Table IV.4: Average Annual Malpractice Insurance Costs per Bed and Related Sampling Errors**

Cost per bed	1983		1984		1985	
	Cost per bed	Sampling error <sup>a</sup>	Cost per bed	Sampling error <sup>a</sup>	Cost per bed	Sampling error <sup>a</sup>
\$353	\$68	\$418	\$129	\$474	\$ .	

<sup>a</sup>Sampling errors are stated at the 95-percent confidence level

Appendix IV  
 Estimated Hospital Data and Related  
 Sampling Errors for Policy Years 1983, 1984,  
 and 1985

**Table IV.5: Distribution of Changes in  
 Malpractice Insurance Costs per  
 Inpatient Day From 1983 to 1985 and  
 Related Sampling Errors**

Figures in percents

Change	Hospitals	Sampling error <sup>a</sup>
Increases of less than 10% or decreases	30.3	14.6
Increases of 10% to 49%	35.1	15.7
Increases of 50% to 99%	25.5	14.2
Increases of 100% to 199%	9.2	7.6
Increases of 200% to 299%	0.0	0.0
Increases of 300% or more	0.0	0.0

<sup>a</sup>Sampling errors are stated at the 95-percent confidence level

Note: The adjusted universe of hospitals was 44

**Addressing the  
Myths & Misconceptions  
about Personal Injury & the  
Civil Justice System**

Compiled by  
**The Alaska Academy of Trial Lawyers**

January 1993

## TABLE OF CONTENTS

Executive Summary	i
Preface	ii
Access to Justice	
Right of Trial by Jury -- The Foundation of Our Society	1
Tort Restrictions Do Not Reduce Insurance Rates	1
The Litigation Crisis: Debunking the Myths	3
Large Jury Verdicts are Uncommon	4
"Horror Stories" Make Bad Public Policy	5
The Costs of Personal Injury	
Injured Persons Bear the Burden of Personal Injury	6
Civil Justice System Promotes Safety in America's Economy	
Tort Law Improves American Products	7
Medical Negligence Facts vs. Myth	
Medical Negligence Claims -- the Real Facts	9
Medical Negligence -- Debunking the Myths	11
Physician Discipline System Does Not Remove Bad Doctors	12
Medical Negligence Insurance -- Costs and Profits	13
Medical Negligence Restrictions Are No Solution	14
Endnotes	15

## EXECUTIVE SUMMARY

### A. Access to Justice

1. Right of Trial by Jury -- The Foundation of Our Society
  - a. A fundamental guarantee in the Alaska State Constitution.
  - b. The jury, as conscience of the community, promotes safety and equity.
  - c. Critics of the jury system are the most likely to request a jury trial.

### B. Tort Restrictions Do Not Reduce Insurance Rates

1. Evidence indicates that tort restrictions have no significant impact on insurance premiums or availability
2. A case history -- medical negligence restrictions have little impact on rates

### C. The Litigation Crisis: Debunking the Myths

1. Personal injury cases represent a small percentage of the courts' workload
2. If there is a "litigation explosion", it is being driven by businesses suing businesses, not by personal injury actions
3. Most cases are resolved prior to trial

### D. Large Jury Verdicts are Uncommon

1. Huge jury verdicts, such as million dollar verdicts, are the exception rather than the rule
2. Jury verdicts can be reduced -- the actual payout to the plaintiff may be less than the jury verdict

### E. "Horror Stories" Make Bad Public Policy

1. Some examples of "horror stories"

### F. The Costs of Personal Injury

1. Injured Persons Bear the Burden of Personal Injury
  - a. The injured person bears the brunt of the cost of injury.
  - b. Personal injury liability compensation does not pay for the actual cost of injuries.

### G. Civil Justice System Promotes Safety in America's Economy

1. Tort Law Improves American Products
  - a. The tort system saves lives, reduces injuries and promotes public safety.
  - b. Insurers reap benefits while projections of future losses have decreased.