

The medical liability crisis: a case for tort reform

By
PETER A.
SCHWARTZ,
MD

I never would have believed it could happen. Jury awards in malpractice cases have topped \$100 million in Philadelphia! Of all the states, Pennsylvania has the highest liability award payouts per physician and the second highest per capita.¹ Consequently, good practitioners of OBG may be forced out of practice by the state's runaway system of medical liability insurance.



In the past 2 years, premiums have increased anywhere from 20% to 300%. A number of insurance companies have gone bankrupt or stopped writing these policies altogether. Many surviving insurers refuse to take on new customers or to

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cover physicians outside of low-risk specialties or with anything less than impeccable records. The result: 23% of physicians surveyed in Philadelphia have stopped practicing obstetrics.² And 8 of the 30 obstetricians in my department, who lost their coverage when their insurers withdrew from Pennsylvania, cannot find any company to write them a policy.

Like many jurisdictions, the Commonwealth of Pennsylvania requires doctors to have liability insurance in order to practice. Physicians who had received too many complaints to be eligible for customary

Dr. Schwartz is director of OBG at the Reading Hospital and Medical Center in Reading, Pa, and past chair of the Pennsylvania chapter of ACOG.

underwriting were able to turn to the Joint Underwriting Association (JUA) for coverage. Now, even the rare Ob/Gyn without any history of a lawsuit is finding it necessary to turn to the JUA. Unfortunately, JUA rates are decidedly unaffordable for most practitioners. A physician willing to practice only gynecology may be offered a policy that costs \$185,000 a year. Ob/Gyns are finding it impossible to obtain affordable insurance, making it impossible for them to practice their profession.

Lest you feel relieved not to be practicing in Pennsylvania, take note: The situation here can serve as a warning of the likely effects of the crisis. In fact, doctors across the country already are being hit with skyrocketing premiums (see page 10 for a review of conditions elsewhere in the nation).

What is fueling this crisis? Awards that are increasingly irrelevant to comparable cases and societal economics. A growing number of actions triggered by poor outcome rather than poor practice. And the slumping stock market, in which many insurers invested heavily, using their gains to subsidize low premiums.

Unfortunately, many of us are too busy dealing with the immediate effects of the crisis to consider its long-term implications, which are potentially devastating: decreased interest in OBG as a specialty and the diminished attractiveness of the medical profession as a whole. Numerous physicians are being forced to discontinue the practice of obstetrics, retire prematurely, or move to a different state.

What is the answer? Thankfully, the state legislature has begun to address Pennsylvania's problem. It recently passed a med-

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The view nationwide: medical liability in selected states

Over the past 2 years, premiums for medical liability insurance have risen sharply, primarily as a result of increasing jury awards. The national average of these awards is now \$3.49 million, an increase of 79% since 1993.¹

Other factors include years of unnaturally low premiums—during which insurers fought over market share—and a declining stock market. (Many insurers covered their losses in premiums with their gains in the market.) Another factor contributing to excessively low premiums in years past is the fact that roughly three-fifths of malpractice insurance is made available by mutual companies, which are owned by physicians and hospitals.¹ The hike in premiums has hit Ob/Gyns and surgeons hardest, since they are sued more frequently than other specialists.

Among the largest insurers, the St. Paul Company increased its premiums an average of 24% in roughly half the states, cutting 42,000 doctors from its rolls, while Scpie Companies raised its rates an average of 30% to 50% in 12 states. A number of physician- and hospital-owned companies are following suit, hiking premiums more than 50%.^{1,2} Conditions vary widely by state. A few snapshots include:

- **West Virginia**, where medical liability premiums for some specialists are more than twice those in neighboring states. Of the 60 insurance companies licensed to provide medical liability coverage in West Virginia, only 2 actively do so, and the largest—St. Paul—plans to leave the state.³
- **Nevada**, where 60% of physicians in Las Vegas were covered by the St. Paul Company until the recent cuts. Those struggling to secure

replacement policies are finding that premiums run 4 to 5 times higher—when they can find them. About 10% of Las Vegas physicians are expected to retire or move away by summer, leaving the city with a serious doctor shortage.² The state legislature recently established a subcommittee to investigate these issues.

- **Mississippi**, where coverage for obstetricians rose 20% to 400% in 2001, and annual premiums range from \$40,000 to \$110,000. Rural areas are bearing the brunt of the suffering, since they were short on doctors to begin with.⁴
- **Florida**, where annual premiums for Ob/Gyns and surgeons top \$100,000 for \$1 million in coverage.¹
- **New Jersey**, where Zurich American Insurance Company raised malpractice premiums for more than 500 doctors. Newly elected Governor Jim McGreevey considers medical liability coverage 1 of the state's 5 most pressing health issues. Obstetricians have seen their premiums rise by as much as 120%.⁵

Repercussions of the crisis include rising medical costs as doctors practice “defensive medicine,” i.e., ordering more tests than usual and opting for “low-risk” procedures such as cesarean delivery. Further, when a physician is sued, he or she is likely to face pressure from the insurer to settle the case, even when the chances of prevailing at trial are good.

The American College of Obstetricians and Gynecologists (ACOG) is monitoring the crisis and has produced a “tool kit” on state obstetric liability reform. For more information, contact the ACOG department of state legislative activities.

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ical liability package requiring that:

- awards for future medical expenses beyond \$100,000 be paid out over time, rather than shelled out up front;
- patients be barred from recovering damages for medical costs already covered by insurers;
- medical experts be required to undergo “judicial qualification” prior to testifying in medical liability cases;
- mandatory liability coverage be reduced from \$1.2 million to \$1 million; and
- \$40 million be set aside annually for 10 years to reduce physicians’ liability expenses.³

But further action is needed. And that action must be swift and decisive to decrease the cost of liability coverage to insurance companies and reduce premiums to physicians. Only actions guaranteed to have those results will preserve access to quality health care. If the practice of quality medicine is to survive in Pennsylvania, we need to:

- Halt “venue shopping.” Because verdicts in Philadelphia have been known to exceed \$100 million, attorneys in other locales—where awards rarely exceed \$1 million—often scramble to move cases to the city. In one patient-injury case, the justification for moving proceedings was the fact that one of the medical instruments had a distributor in Philadelphia, even though the patient, physician, and hospital were from another county.

- Curtail the amount juries can award for “pain and suffering.” Although it is impossible to put a price on these judgments, \$100 million is absurd! The amount must be capped at a level such as \$250,000 or a multiple, e.g., 200%, of the economic loss.

- Pay awards for nonmedical expenses over time. When verdicts cover expenses over a period of 30 or 40 years, payments should be disbursed over that interval as well.

- Abolish “joint and several” liability. Attorneys often attempt to sue anyone who encountered the injured patient, including the hospital. The practice of joining several liabilities means that even an entity found to be minimally involved will be required to contribute to the judgment. Today, joint and several liability typically is used to create “deep pockets.” It encourages attorneys to move forward even when their cases are questionable.

Finally, we should avoid blaming this crisis on the patient. After all, 99.9% of patients are our best allies in this struggle. Their welfare and continued access to high-quality care should be our primary concerns.

You need to get to work on your medical liability situation before you become another Pennsylvania. We need tort reform if our patients are going to maintain access to their health-care provider. And we need it now!

Editor’s note: At press time, the Pennsylvania malpractice overhaul was waiting to be signed into law. ■

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