

Patient Access Crisis: The Role of Medical Litigation

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Witness:

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Testimony:

WHO WILL DELIVER AMERICA'S BABIES?

THE IMPACT OF EXCESSIVE LITIGATION

On behalf of the American College of Obstetricians and Gynecologists (ACOG), an organization representing more than 45,000 physicians dedicated to improving the health care of women, I thank Chairman Hatch and Chairman Gregg for holding this important hearing to examine the medical liability crisis facing this nation. Women across America are asking, "Who will deliver my baby?" ACOG deeply appreciates your leadership and commitment to ending this crisis.

We urge Congress to pass meaningful medical liability reform, patterned on California's MICRA law, and bring an end to the excessive litigation restricting women's access to health care.

I. Doctors Help Every Day

My name is Dr. Shelby L. Wilbourn and I am an ob-gyn who recently relocated to Belfast, Maine after 12 years of practice in Las Vegas, Nevada. Every day in America, doctors help millions of mothers, children, grandfathers, and sisters live another day, see another birthday, play another game. Every day, beautiful newborns go home with their mother. Every day, there is another breast cancer survivor or a life saved by a highly trained physician.

Doctors help make miracles happen every day in America. This is what makes our American health care system the envy of the entire world. And this is what's at stake in this debate about medical liability reform.

II. Personal Effects of The Medical Liability Crisis on My Practice

Liability isn't about fault or bad practice anymore. It's about hitting a jackpot. Even the very best ob-gyns have been sued, many more than once. Even doctors who have never been sued are seeing their liability premiums double and triple - not because they're bad docs, but because they practice in a litigation-happy field where everyone is fair game.

Let me cite a perfect example, which demonstrates the imbalance of the current tort system. I just recently relocated to Maine after 12 years of practice in Nevada because of the skyrocketing liability insurance premiums in that state. I had a vibrant ob-gyn practice, taught at the University of Nevada, and served as a member of the board of the directors of the Clark County Ob-gyn Society. The Society worked in conjunction with

Governor's Task Force on the medical liability crisis.

I left Nevada because the litigation climate had driven the medical liability premiums to astronomical heights. In 2002, Las Vegas ob-gyns paid as much as \$141,760, a 49.5% increase from 2001. In Clark County, there are only 106 ob-gyns, private, public, and resident practitioners, left to deliver an estimated 23,000 babies in 2003 - an average of 216 babies per ob-gyn. Of these, 80% no longer accept Medicaid patients because of the threat of litigation coupled with low reimbursement.

Last July, I was privileged to meet with President Bush in North Carolina to discuss the medical liability crisis on a national level. At that time, I had never been named in a lawsuit, a fact that was made known during the roundtable discussion. Within days of my meeting with President Bush, a lawsuit was filed against me. In addition, all but one of the doctors Governor Guinn named to the Task Force in Nevada had lawsuits filed against them within a short period, as well.

When I left Nevada, my patients, many of whom were with me for 12 years, were forced to find another ob-gyn amongst a dwindling population of ob-gyns in Las Vegas. This is the real issue. Patients around the country are losing access to good doctors and quality health care. The end game of the current system is a society without enough doctors to care for its citizens. We just cannot let this happen.

Today, we have heard, or will hear, anecdotes from both sides of this debate, all of which support each side's position. However, the fact remains clear - there is a medical liability crisis in this nation. Who loses in this environment? Women, good doctors, patients, communities, businesses, and America.

III. Effects of Excessive Litigation on Women's Health Care: An Overview

The number of lawsuits against all physicians has been rising over the past 30 years in an increasingly litigious climate, and obstetrics-gynecology--considered a "high risk" specialty by insurers--remains at the top of the list of specialties affected by this trend.

An ailing civil justice system is severely jeopardizing patient care for women and their newborns. Across the country, liability insurance for obstetrician-gynecologists has become prohibitively expensive. Premiums have tripled and quadrupled practically overnight. In some areas, ob-gyns can no longer obtain liability insurance at all, as insurance companies fold or abruptly stop insuring doctors.

When ob-gyns cannot find or afford liability insurance, they are forced to stop delivering babies, curtail surgical services, or close their doors. The shortage of care affects hospitals, public health clinics, and medical facilities in rural areas, inner cities, and communities across the country.

Now, women's health care is in jeopardy for the third time in three decades. This crisis will only end if Congress acts. The recurring liability crisis involves more than the decisions of individual insurance companies. The manner in which our antiquated tort

system resolves medical liability claims is at the root of the problem.

A liability system--encompassing both the insurance industry and our courts--should equitably spread the insurance risk of providing affordable health care for our society. It should fairly compensate patients harmed by negligent medical care. It should provide humane, no-fault compensation to patients with devastating medical outcomes unrelated to negligence--as in the case of newborns born with conditions such as cerebral palsy. Our current system fails on all counts. It's punitive, expensive, and inequitable for all, jeopardizing the availability of care.

Jury awards, which now soar to astronomical levels, are at the heart of the problem. The average liability award increased 97% between 1996 and 2000, fueled by states with no upper limits on jury awards. This "liability lottery" is enormously expensive, and patients who need, but can't get, health care, pay the price.

The current liability system encourages attorneys to focus on a few claims with exorbitant award potential, ignoring other claims with merit. Even then, much of a jury award goes straight into the lawyers' pockets; typically, less than half of a medical liability award reaches the patient.

Liability isn't about fault or bad practice anymore. It's about hitting a jackpot. Even the very best ob-gyns have been sued, many more than once. Even doctors who have never been sued are seeing their liability premiums double and triple - not because they're bad docs, but because they practice in a litigation-happy field where everyone is fair game.

The liability crisis compromises the delivery of health care today. A recent Harris survey showed that three-fourths of physicians feel their ability to provide quality care has been hurt by concerns over liability cases. And, patients understand the problem, too. An April 2002 survey by the Health Care Liability Alliance found that 78% of Americans are concerned about the impact of rising liability costs on access to care.

IV. Women's Health Consequences of Excessive Litigation

The medical liability crisis affects every aspect of our nation's ability to deliver health care services. As partners in women's health care, we urge Congress to end the medical liability insurance crisis. Without legislative intervention at the federal level, women's access to health care will continue to suffer.

Expectant mothers can't find obstetricians to deliver their babies. When confronted with substantially higher costs for liability coverage, ob-gyns and other women's health care professionals stop delivering babies, reduce the number they do deliver, and further cut back--or eliminate--care for high-risk mothers. With fewer women's health care professionals, access to early prenatal care is reduced, depriving women of the proven benefits of early intervention.

Excessive litigation threatens women's access to gynecologic care. Ob-gyns have, until recently, routinely met women's general health care needs--including regular screenings

for gynecologic cancers, hypertension, high cholesterol, diabetes, osteoporosis, and other serious health problems. Staggering premiums continue to burden women's health care professionals and will further diminish the availability of women's care.

Medical liability is causing a rural health crisis. Women in underserved rural areas have historically been particularly hard hit by the loss of physicians and other women's health care professionals. With the economic viability of delivering babies already marginal due to sparse population and low insurance reimbursement for pregnancy services, increases in liability insurance costs are forcing rural providers to stop delivering babies.

Community clinics must cut back services, jeopardizing the millions of this nation's uninsured patients--the majority of them women and children--who rely on community clinics for health care. Unable to shift higher insurance costs to their patients, these clinics have no alternative but to care for fewer people.

More women are becoming uninsured. Health care costs continue to increase overall, including the cost of private health care coverage. As costs escalate, employers will be discouraged from offering benefits. Many women who would lose their coverage, including a large number of single working mothers, would not be eligible for Medicaid or SCHIP because their incomes are above the eligibility levels. In 2001, 11.7 million women of childbearing age were uninsured. Without reform, even more women ages 19 to 44 will move into the ranks of the uninsured. If fewer doctors are available to deliver babies, the crisis becomes even more acute.

V. How Excessive Litigation Compromises the Delivery of Obstetric Care

Obstetrics-gynecology is among the top three specialties in the cost of professional liability insurance premiums. Nationally, insurance premiums for ob-gyns have increased dramatically: the median premium increased 167% between 1982 and 1998. The median rate rose 7% in 2000, 12.5% in 2001, and 15.3% in 2002 with increases as high as 69%, according to a survey by Medical Liability Monitor, a newsletter covering the liability insurance industry.

A number of insurers are abandoning coverage of doctors altogether. The St. Paul Companies, Inc., which handled 10% of the physician liability market, withdrew from that market last year. One insurance ratings firm reported that five medical liability insurers failed in 2001. One-fourth of the remaining insurers were rated D+ or lower, an indicator of serious financial problems.

According to Physicians Insurance Association of America, ob-gyns were first among 28 specialty groups in the number of claims filed against them in 2000. Ob-gyns were the highest of all specialty groups in the average cost of defending against a claim in 2000, at a cost of \$34,308. In the 1990s, they were first--along with family physicians-general practitioners--in the percentage of claims against them closed with a payout (36%). They were second, after neurologists, in the average claim payment made during that period (\$235,059).

Although the number of claims filed against all physicians climbed in recent decades, the phenomenon does not reflect an increased rate of medical negligence. In fact, ob-gyns win most of the claims filed against them. A 1999 ACOG survey of our membership found that over one-half (53.9%) of claims against ob-gyns were dropped by plaintiff's attorneys, dismissed or settled without a payment. Of cases that did proceed, ob-gyns won more than 65% of the cases resolved by court verdict, arbitration, or mediation, meaning only 10% of all cases filed against ob-gyns were found in favor of the plaintiff. Enormous resources are spent to deal with these claims, only 10% of which are found to have merit. The costs to defend these claims can be staggering and often mean that physicians invest less in new technologies that help patients.

When a jury does grant an award, it can be exorbitant, particularly in states with no upper limit on awards. Jury awards in all civil cases averaged \$3.49 million in 1999, up 79% from 1993 awards, according to Jury Verdict Research of Horsham, Pennsylvania. The median medical liability award jumped 43% in one year, from \$700,000 in 1999, to \$1 million in 2000: it has doubled since 1995.

Ob-gyns are particularly vulnerable to this trend, because of jury awards in birth-related cases involving poor medical outcomes. The average jury award in cases of neurologically impaired infants, which account for 30% of the claims against obstetricians, is nearly \$1 million, but can soar much higher. One recent award in a Philadelphia case reached \$100 million. This in spite of the fact that fewer than 10% of these cases are found to result from intrapartum hypoxia.

We survey our members regularly on the issue of medical professional liability. According to our most recent survey, the typical ob-gyn is 47 years old, has been in practice for over 15 years--and can expect to be sued 2.53 times over his or her career. Over one-fourth (27.8%) of ACOG Fellows have even been sued for care provided during their residency. In 1999, 76.5% of ACOG Fellows reported they had been sued at least once so far in their career. The average claim takes over four years to resolve.

This high rate of suits does not equate malpractice. Rather, it demonstrates a lawsuit culture where doctors are held responsible for less than perfect outcome. And in obstetrics gynecology, there is no guarantee of a perfect outcome, no matter how perfect the prenatal care and delivery.

VI. There Is A Solution

On February 5, 2003, the House of Representatives took an important first step in ending this crisis when Representative Greenwood, Majority Whip Delay, and Judiciary Committee Chairman Sensenbrenner introduced HR 5, the HEALTH Act of 2003. ACOG resoundingly supports HR 5, important legislation protecting women's access to health care. This legislation is supported by a broad coalition of physicians, health insurers, and businesses.

HR 5 caps non-economic damages at \$250,000, while still allowing patients full and complete access to the courts. The HEALTH Act safeguards patients' access to health care with common sense measures:

Allows Complete Recovery of All Economic Damages, Including Current and Future Lost Wages

Promotes Speedy Resolution of Claims

Fairly Allocates Responsibility

Compensates Patient Injury

Maximizes Patient Recovery

Ensures Payment of Medical Expenses

Allows State Flexibility on Non-Economic Damages Caps

HR 5 allows for the complete recovery of a person's economic damages, including compensation for medical and rehabilitation costs, current and future "lost" wages, and other economic loss. HR 5 is fair for everyone. HR 5 will restore the balance in the health care system that has been hijacked by trial lawyers and merit-less lawsuits.

VII. Women's Health Suffers Nationwide

As ob-gyns, our primary concern is ensuring women access to affordable, quality health care. It is critical that we maintain the highest standard of care for American's women and mothers. In 2002, ACOG has identified a medical liability crisis in the following nine "Red Alert States": Florida, Mississippi, Nevada, New Jersey, New York, Pennsylvania, Texas, Washington, and West Virginia. In three other states--Ohio, Oregon, and Virginia--a crisis is brewing, while four other states--Connecticut, Illinois, Kentucky and Missouri--should be watched for mounting problems.

In identifying these states, the College considered a number of factors in the escalating medical liability insurance crisis for ob-gyns. The relative weight of each factor could vary by state. Factors included: the lack of available professional liability coverage for ob-gyns in the state; the number of carriers currently writing policies in the state, as well as the number leaving the medical liability insurance market; the cost, and rate of increase, of annual premiums based on reports from industry monitors; a combination of geographical, economic, and other conditions exacerbating an already existing shortage of ob-gyns and other physicians; the state's tort reform history, and whether tort reforms have been passed by the state legislature--or are likely to be in the future--and subsequently upheld by the state high court.

A. Florida

According to First Professionals Insurance Company, Inc., Florida's largest medical liability insurer, one out of every six doctors is sued in the state as compared to one out of every 12 doctors nationwide.

In Dade and Broward counties in South Florida, where insurers say litigation is the heaviest, annual premiums for ob-gyns soared to \$210,576 -- the highest rates in the country, according to Medical Liability Monitor.

In a recent ACOG survey, 76.3% of the Florida ob-gyns who responded to the survey indicated that they had made some change to their practice such as retire, relocate, decrease gynecologic surgical procedures, no longer perform major gynecologic surgery, decrease the number of deliveries and amount of high-risk obstetric care. 21.69% of Florida respondents indicated that they have stopped practicing obstetrics due to the unavailability and unaffordability of liability insurance.

The liability situation is so severe the state allows doctors to "go bare" (not have liability coverage), as long as they can post bond or prove ability to pay a judgment of up to \$250,000.

Double- and triple-digit premium increases have forced some doctors to cut back on staff, while others have left the state or have stopped performing high-risk procedures. Ob-gyns in this state are more likely to no longer practice obstetrics.

Florida already has some tort-reform laws aimed at protecting doctors. But more recent Florida Supreme Court rulings have weakened such laws, causing the number of lawsuits to climb again. Now Florida is one of at least a dozen states contemplating another round of legislation.

B. Mississippi

According to the Mississippi State Medical Association, medical liability insurance rates for doctors who deliver babies rose 20% to 400% in 2002, for various carriers. Annual premiums range from \$40,000 to \$110,000.

The Delta Democrat Times reported that from 1999 to 2000, the number of liability lawsuits faced by Mississippi physicians increased 24%, with an additional 23% increase in the first five months of 2001.

According to the Delta Democrat Times, 324 Mississippi physicians have stopped delivering babies in the last decade. Only 10% of family physicians deliver babies. In a recent ACOG survey, 66.7% of the Mississippi ob-gyns who responded to the survey indicated that they had made some change to their practice such as retire, relocate, decrease gynecologic surgical procedures, no longer perform major gynecologic surgery, decrease the number of deliveries and amount of high-risk obstetric care. 12.82% of Mississippi respondents have stopped practicing obstetrics.

In Cleveland, Mississippi, three of the six doctors who deliver babies dropped obstetrics in October 2001 because of the increase in premiums.

In Greenwood, Mississippi, where approximately 1,000 babies are born every year, the number of obstetricians has dropped from four to two. The two remaining obstetricians are each limited by their insurance carriers to delivering 250 babies per year, leaving approximately 500 pregnant women searching for maternity care, reports the Mississippi Business Journal.

Yazoo City, Mississippi, with 14,550 residents, has no obstetrician.

A Grenada, Mississippi ob-gyn will not take any obstetric patients with a due date after June 15, 2003, leaving two ob-gyns to deliver approximately 700 babies a year.

Natchez, Mississippi, which serves a 6-county population of over 100,000, has only three physicians practicing obstetrics.

Days before HB2 (legislation aimed at reducing liability insurance costs and improving access to health care) took effect, there was a rush of medical liability lawsuits filed in Mississippi. State Insurance Commissioner George Dale said these claims will be in the system for a long time and the market for medical liability insurance is not likely to get better any time soon.

The state's major insurer of hospitals, Reciprocal of America, is facing financial difficulties and recently asked participants to pay \$30 million to help keep it afloat, according to the state insurance commissioner's office.

C. Nevada

In December 2001, The St. Paul Companies, Inc., the nation's second largest medical liability insurer, announced it would no longer renew policies for 42,000 doctors nationwide -- including the 60% of Las Vegas doctors who were insured by St. Paul. Replacement policies are costing some Nevada doctors four or five times as much as before: \$200,000 or higher annually, more than most doctors' take-home pay, the Los Angeles Times reports.

In Las Vegas, ob-gyns paid premiums as high as \$141,760, a 49.5% increase from 2001. In the ACOG survey, 86.2% of the Nevada ob-gyns who responded to the survey indicated that they had made some change to their practice such as retire, relocate, decrease gynecologic surgical procedures, no longer perform major gynecologic surgery, decrease the number of deliveries and amount of high-risk obstetric care. 27.59% of Nevada respondents stopped practicing obstetrics.

As of October 2002, according to Clark County OB-GYN Society, only 80 private practice physicians, 14 HMO physicians, and 12 residents are doing deliveries, totaling 106 doctors. With an estimated 23,000 deliveries expected in Nevada in 2003, each physician will have to deliver 216 babies.

According to a March article in the Las Vegas Review-Journal, many Las Vegas Valley doctors say they will be forced to quit their practices, relocate, retire early or limit their services if they cannot find more affordable rates of professional liability insurance by early summer.

According to the Nevada State Medical Association, between 200 and 250 physicians will face bankruptcy, close their offices, or leave Nevada this year.

In February 2002, the Las Vegas Sun reported that medical liability cases in Clark County had more than doubled in the past six years. In that period, plaintiffs' awards in the county totaled more than \$21 million.

USA Today reports that in the past two years, Nevada juries have awarded more than \$1.5 million each in six different medical liability trials.

Recruiting doctors to Las Vegas is extremely difficult because of escalating medical liability premiums and litigiousness. Nevada currently ranks 47th in the nation for its ratio of 196 doctors per 100,000 population. The state's medical school produces just 50 physicians a year.

In August 2002, the Nevada Legislature met in Special Session and passed tort reform - AB 1. AB 1 included a partial cap on awards for non-economic damages and a total cap on trauma liability. There has been no significant improvement in the availability of affordable medical liability coverage, according to a September 2002 statement by the Nevada State Medical Association. Most carriers have continued to request and receive approval to raise rates.

The Nevada tort reform legislation went into effect in January 2003. In December 2002, the frequency of lawsuits filed against health care providers skyrocketed with 170 suits filed in December 2002 (as compared to 8 suits filed in 2001).

D. New Jersey

In the ACOG survey, 75.6% of the New Jersey ob-gyns who responded to the survey indicated that they had made some change to their practice such as retire, relocate, decrease gynecologic surgical procedures, no longer perform major gynecologic surgery, decrease the number of deliveries and amount of high-risk obstetric care. 19% of New Jersey respondents have stopped practicing obstetrics.

In February 2002, the Newark Star-Ledger reported that three medical liability insurance companies went bankrupt or announced they would stop insuring New Jersey physicians in 2002 for financial reasons. The state's two largest remaining are rejecting doctors they deem high risk.

MBS Insurance Services of Denville, one of New Jersey's largest medical liability insurance brokers, estimates that approximately 300 to 400 of the state's doctors cannot get insurance at any price.

According to the Medical Society of New Jersey, premiums have risen 50% to 200% over last year.

According to the Star-Ledger, "An obstetrician with a good history -- maybe just one dismissed lawsuit -- can expect to pay about \$45,000 for \$1 million in coverage. Rates rise if the physician faces several lawsuits, regardless of whether the physician has been found liable in those cases."

The president of the New Jersey Hospital Association says that rising medical liability premiums are a "wake-up call" that the state may lose doctors. Hospital premiums have risen 250% over the last three years, and 65% of facilities report that they are losing physicians due to liability insurance costs.

E. New York

New York State faces a shortage of obstetric care in many rural regions. Increasing liability insurance costs will only exacerbate these access problems.

In the ACOG survey, 67% of the New York ob-gyns who responded to the survey indicated that they had made some change to their practice such as retire, relocate, decrease gynecologic surgical procedures, no longer perform major gynecologic surgery, decrease the number of deliveries and amount of high-risk obstetric care. 19.28% of New York respondents have stopped practicing obstetrics.

In 2002, an ob-gyn practicing in New York could pay as much as \$115,500 for medical liability insurance, according to Medical Liability Monitor.

In 2000, there was a total of \$633 million in medical liability payouts in New York State, far and away the highest in the country, and 80% more than the state with the second highest total.

Increased insurance rates have forced some physicians in New York to "quit practicing or to practice medicine defensively, by ordering extra tests or procedures that limit their risk," according to a recent New York Times report.

Physician medical liability insurance costs have historically been a problem in New York State. The legislature and governor had to take significant action in the mid-1970s and again in the mid-1980s to avert a liability insurance crisis that would have jeopardized access to care for patients.

F. Pennsylvania

In the ACOG survey, 77.4% of the Pennsylvania ob-gyns who responded to the survey indicated that they had made some change to their practice such as retire, relocate, decrease gynecologic surgical procedures, no longer perform major gynecologic surgery, decrease the number of deliveries and amount of high-risk obstetric care. 21.61% of Pennsylvania respondents have stopped practicing obstetrics.

Pennsylvania is the second-highest state in the country for total payouts for medical liability. During the fiscal year 2000, combined judgments and settlements in Pennsylvania amounted to \$352 million -- or nearly 10% of the national total.

From the beginning of 1997 through September 2001, major liability insurance carriers writing in Pennsylvania increased their overall rates 80.7% to 147.8%, according to a January 2002 York Daily Record article.

Philadelphia and the counties surrounding it are hardest hit by the liability crisis. From January 1994 through August 2001, the median jury award in Philadelphia for a medical liability case was \$972,900. For the rest of the state, including Pittsburgh, the median was \$410,000.

One-quarter of respondents to an informal ACOG poll of Pennsylvania ob-gyns say they have stopped or are planning to stop the practice of obstetrics. 80% of medical students who come to the state for a world-class education choose to practice elsewhere, according to the Pennsylvania State Medical Society.

On April 24, 2002, Methodist Hospital in South Philadelphia announced that it would stop delivering babies due to the rising costs of medical liability insurance. The labor and delivery ward closed on June 30, leaving that area of the city without a maternity ward. Methodist Hospital has been delivering babies since its founding in 1892.

Some tort reform measures passed the state legislature (House Bill 1802) in 2002.

However, the law did not include: caps on jury awards; sanctions on frivolous suits; changes in joint and several liability; limits on lawyers' fees; or a guarantee that a larger share of jury awards will go to injured plaintiffs.

The rules for venue of court cases in Pennsylvania are very liberal. Recently approved measures only appoint a committee to study venue shopping, but do not limit the practice. Since HB 1802 passed, experts predict a 15% to 20% overall reduction in doctors' liability premiums. But with the 50% to 100% premium increases of the last two years, medical officials believe the bill is not enough to stop physicians from leaving practice or to attract new physicians. Nor do they believe new insurers will begin writing policies in Pennsylvania.

G. Texas

In the ACOG survey, 67.5% of the Texas ob-gyns who responded to the survey indicated that they had made some change to their practice such as retire, relocate, decrease gynecologic surgical procedures, no longer perform major gynecologic surgery, decrease the number of deliveries and amount of high-risk obstetric care. 13.79% of Texas respondents have stopped practicing obstetrics.

Preliminary results of a recent Texas Medical Association physician survey indicate that: More than half of all Texas physicians responding, including those in the prime of their careers, are considering early retirement because of the state's medical liability insurance crisis.

Nearly a third of the responding physicians said they are considering reducing the types of services they provide.

Medical liability insurance premiums for 2002 were expected to increase from 30% to 200%, according to the Texas Medical Association. In 2001, ob-gyns in Dallas, Houston, and Galveston paid medical liability insurance premiums in the range of \$70,000 to \$160,000.

The Abilene Reporter News reported on October 13, 2002, that the obstetrics unit at Spring Branch Medical Center is set to close December 20, 2002. The hospital's \$600,000 premium for labor and delivery liability was set to increase by 67% next year. In 2001, 1,003 babies were born at Spring Branch Medical Center.

According to Governor Rick Perry's office, between 1996 and 2000 one in four Texas physicians had a medical liability claim filed against them. In the Lower Rio Grande Valley, the situation is even worse. In 2002, Valley ob-gyns paid liability insurance premiums up to \$97,830, a 34.5% increase from 2001.

According to a February 2001 Texas Medical Association survey, one in three Valley doctors say their insurance providers have stopped writing liability insurance.

In 2000, 51.7% of all Texas physicians had claims filed against them, according to the Texas Medical Examiners Board. Patients filed 4,501 claims, up 51% from 1990.

As many as 86% of medical liability claims filed in Texas are dismissed or dropped without payment to the patient. Yet providers and insurance companies must still spend millions of dollars in defense, even against baseless claims.

According to a Texas Medical Association study, the amount paid per claim in 2000 was \$189,849 (average for all physicians), a 6% increase in one year.

Texas has no limits on non-economic damages in medical liability cases, although the legislature enacted such limits in the 1970s as part of a comprehensive set of reforms. The Texas Supreme Court later rejected them in the 1980s.

Texas has procedures in place to screen lawsuits for merit and to sanction lawyers who file frivolous suits, but these are not enforced uniformly across the state, according to an April 2002 news release issued by Governor Rick Perry.

Only about 30% of the medical liability insurance market is served by insurance companies that are regulated by the Texas State Department of Insurance and subject to rate review laws, according to Governor Perry's office.

H. Washington

According to Medical Liability Monitor, in late 2001 the second largest carrier in Washington State announced that it was withdrawing from providing medical liability insurance for Washington physicians. This decision by Washington Casualty Company impacted approximately 1,500 physicians.

In 2001, state ob-gyns paid medical liability insurance premiums in the range of \$34,000 to \$59,000. For many physicians, this meant an increase of 55% or higher from the year 2000.

In the ACOG survey, 57.2% of the Washington ob-gyns who responded to the survey indicated that they had made some change to their practice such as retire, relocate, decrease gynecologic surgical procedures, no longer perform major gynecologic surgery, decrease the number of deliveries and amount of high-risk obstetric care. 15.06% of Washington respondents have stopped practicing obstetrics.

According to the Pierce County Medical Society, some Tacoma specialists reported 300% increases.

Unlike California, Washington has no cap on non-economic damages in medical liability cases. The State Supreme Court found a previous cap unconstitutional in 1989.

In April, The Olympian reported that Washington State Insurance Commissioner's office heard from physicians throughout the state that they may be forced out of Washington because of high medical liability rates or the lack of available insurance.

I. West Virginia

There are only three carriers in the state -- including the state-run West Virginia Board of Risk and Insurance Management -- currently writing medical liability policies for doctors. Annual premiums range from \$90,700 to \$99,800.

In the ACOG survey, 82.2% of the West Virginia ob-gyns who responded to the survey indicated that they had made some change to their practice such as retire, relocate, decrease gynecologic surgical procedures, no longer perform major gynecologic surgery, decrease the number of deliveries and amount of high-risk obstetric care. 23.66% of West Virginia respondents stopped practicing obstetrics.

In 2000, many physicians had problems affording or finding insurance. This urgency prompted Governor Bob Wise to issue a request for proposals to commercial insurance carriers asking them to provide terms under which they would be willing to come to the state. The governor's office received no response at all. To date, some carriers previously active in West Virginia are under an indefinite, self-imposed moratorium for new business in the state, according to the West Virginia State Medical Society.

Legislation eked out during a grueling special session in the fall of 2001 reestablished a state-run insurer of last resort. However, with rates 10% higher than the highest commercial rate, and an additional 50% higher for physicians considered high risk, the state-run insurer does not solve the affordability problem, according to ob-gyns in the state.

According to an informal survey of ACOG's West Virginia section, more than half of all ob-gyn residents plan to leave the state once they have completed training because of the state's medical liability insurance climate. A majority of private practitioners who provide obstetric care plan to leave the state if there is not improvement in the insurance crisis. West Virginia cannot afford to lose more doctors. The West Virginia State Medical Society reports that a majority of the state is officially designated by the federal government as a health professional shortage area and medically underserved.

VIII. Conclusion

Thank you Senator Hatch, Senator Gregg for your leadership on this important issue and for the Committees' attention to this crisis. ACOG appreciates the opportunity to present our concerns for the Committees' consideration. The College looks forward to working with you as we push for federal liability reform.

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