Medical Liability Crisis Threatens Oncology Community Is it jeopardizing quality cancer care?

by Marion Dinitz

Spiraling medical liability insurance rates are squeezing many oncology practices and forcing some hospitals and cancer programs to reduce or, in some cases, eliminate critical services. Rising medical liability premiums coupled with excessive jury awards threaten to compromise patient access to care, and some oncologists are giving up high-risk procedures, re-evaluating their malpractice policies, relocating to states with lower malpractice rates, or retiring early.

As physicians face increased deductibles, many are opting for alternatives ranging from reducing their level of coverage to practicing without coverage—or going bare—in states that permit this practice.[1] At least 13 states require physicians to carry liability insurance in order to keep their medical license or to qualify for state liability reforms such as caps.[2] Many hospitals also require that physicians on their medical staffs hold minimum levels of insurance, and health plans typically require insurance of their panel members.

According to the American Medical Association, 19 states are currently facing a medical liability "crisis."[3] These states include Connecticut, New York, Pennsylvania, Florida, Texas, and Oregon. Twenty-five states are exhibiting "problem signs," and only six states, including California and Wisconsin, seem "unaffected" by this burgeoning problem. The AMA considers a state to be in crisis when problems obtaining liability coverage restrict the patient's access to essential health services.

While some physicians are staging rallies at their state capitols to express outrage over medical liability insurance, many state lawmakers are holding marathon legislative sessions debating tort reform. Providers are making calls and sending letters to lawmakers explaining that high malpractice rates and fewer insurers to choose from are detrimental for physicians already seeing low payments from Medicare, Medicaid, and managed care.

A GROWING PROBLEM

Unfortunately, medical liability insurance rates show no sign of slowing in 2004, with claims costs for hospitals and physicians expected to increase 9.7 percent after similar increases in the past three years, according to a new study by Aon's Risk Services.[4] The average size of hospital liability claims has nearly doubled since 1996 to an expected $150,000 in 2004.[4] Physician liability claims are expected to average $178,000 in 2004, up from $120,000 in 1996.[4] While the frequency of claims is increasing, the study found the "real problem" is the growing size of liability awards.

The basis for malpractice claims against physicians generally falls into one of three categories:[5]

- Failure to diagnose—28 percent of claims
- Surgery-related claims—27 percent of claims
- Improper treatment—26 percent of claims.

The remaining 19 percent were for claims such as adverse reaction to anesthesia, injection site injuries, and lack of informed consent.[5]

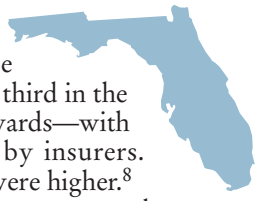
Multiple factors are contributing to the huge increases in medical malpractice premium rates, including heavy losses for insurers, a smaller number of insurers, rising reinsurance rates, and falling interest rates with an associated reduction in investment income, and top-dollar liability awards.[6]

Since 1999, the profitability of the medical malpractice insurance market as a whole has declined—even with increasing premium rates—causing some larger insurers to pull out of this market, either in certain states or nationwide.[7]

TAKING A BITE OUT OF ONCOLOGY PRIVATE PRACTICES

To find out how rising medical malpractice premium rates are affecting the oncology community, *Oncology Issues* interviewed a number of oncology practices and cancer programs across the country. Here's what we found.

Florida



This southern state, in particular, has been hit hard with malpractice jury awards. In 2000 Florida ranked third in the nation for total malpractice jury awards—with over $321 million in awards paid by insurers. Only Pennsylvania and New York were higher.[8]

Such monumental jury awards have prompted several malpractice carriers in Florida to stop insuring new physicians or pull out of the state altogether. The St. Paul Companies, previously the second largest medical malpractice insurer in the U.S., pulled out of the medical liability market nationwide because of decline profitability. PHICO Insurance Co. was forced into liquidation in

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February 2002 when its surpluses fell too low. Clarendon National also exited the Florida market. Zurich American Insurance Co. said it would no longer cover small physician groups or individuals, just to name a few.[8] Those carriers that continue to offer malpractice insurance have raised their premiums through the roof.

Six years ago, Florida Oncology Associates in Orange Park, a practice of 19 medical oncologists, paid between $6,000 and $7,000 per year for medical liability coverage per physician for $2 million to $4 million of coverage. Today, the practice is paying in the mid-$20,000 range per year per medical oncologist, while coverage has decreased to between $1 million and $3 million. The practice expects its rates to go up this year as well.

In Jacksonville, the medical liability crisis brought the surgical group North Florida Surgeons to its knees. Since its inception in 1996, the group has been sued for alleged malpractice 39 times—all but three surgeons have been sued at least once. Although the practice has never lost a case "in group," it has paid $6.4 million in defense costs, settlements, and reserves for losses.[9]

In just one year, the group's annual liability premiums leapt from about $450,000 to more than $1.2 million, for one-fourth of the coverage. In May 2003 skyrocketing medical liability premiums, claims, and losses actually forced the group to stop practicing for about three months. Because this large surgical practice—comprised of about 20 general surgeons—performs about 60 percent of the surgeries in the Jacksonville and north Florida area, community cancer centers that relied on the practice for surgical services were immediately thrown into turmoil, struggling to find care for patients who needed biopsies or had to have infusion lines. The situation was so dire that radiologists in the area stopped doing mammograms because there were no surgeons to do biopsies on abnormal mammograms.

Pennsylvania

Many insurance agencies have also stopped offering medical malpractice insurance in Pennsylvania, a problem that was compounded by the 2002 insolvency of the state's leading carrier PHICO. Between 1990 and 1998, three other major carriers failed—PIC of Pennsylvania, PIE of Ohio, and AHSPIC, an "offshore captive" subsidiary of the Allegheny hospital system. Since 2001 the St. Paul Group of Companies has withdrawn, and Princeton and MIIX "non-renewed" Pennsylvania physicians in 2002.[10]

According to the Hospital Association of Pennsylvania, only two insurers are underwriting new policies for hospitals, and even the carriers still in the market are offering much less coverage.

"Many of our good people that train at Pennsylvania's medical institutions are leaving for states where they have some measure of liability protection," said Richard Shadduck, MD, president of the Pennsylvania Society of Oncology/Hematology. "If this decline continues, we're not going to have enough physicians in the state," he said.

Shadduck maintains that those oncologists still practicing are putting in longer hours, and to some extent, putting off new appointments due to the state's physician shortfall. "Even worse, some patients are driving 50 or 60 miles to see a specialist," said Shadduck. "That's not good."

Among physicians hit the hardest are radiologists specializing in mammography. The loss of radiologists in Pennsylvania has resulted in waiting periods for routine mammographies of up to eight months.[11]

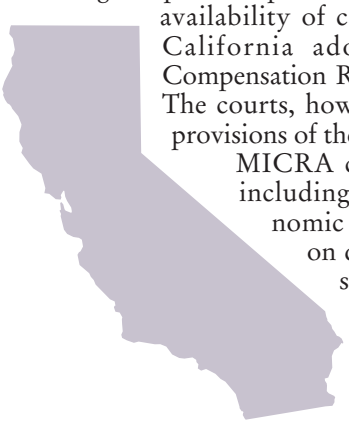
Oregon

Since the cap on non-economic damages was lifted in a ruling by the Oregon Supreme Court in 1999, medical liability premiums have skyrocketed—as much as 200 percent for many specialties. The amount of money awarded from jury awards jumped 65 percent.[12]

In October 2003 Oregon Hematology Oncology Associates, a private oncology practice that provides services to 11 sites across the greater Portland area, had to transition when their insurance carrier stopped offering occurrence insurance. Occurrence coverage continues even after the expiration

of a policy for malpractice claims against physicians during the time the policy was in force. Instead, the carrier switched to claims-made coverage. Under a claims-made policy, the claim must occur prior to the expiration of the policy. Should a physician leave the practice and be sued, sorry. Coverage ends at policy expiration unless "tail coverage" is purchased—coverage a doctor gets when he or she leaves a practice. Today, the Portland practice of 11 physicians and four nurse practitioners must pay for both a claims-made policy and a tail-coverage policy, depending on the physician's contract with the practice.

California



In the early 1970s, California suffered from rapidly escalating malpractice premiums that affected quality and availability of care in the state. In response, California adopted the Medical Injury Compensation Reform Act (MICRA) in 1975. The courts, however, did not uphold the key provisions of the reform until the mid-1980s.[11] MICRA contained several provisions, including a $250,000 cap on non-economic damages, binding arbitration on disputes, collateral sources offsets, limits on contingency fees, advance notice of malpractice claims, statute of limitations, and periodic payment of damages. Although California still has problems with its malpractice system, including a high claiming rate, it has not experienced the same rate of growth in malpractice premiums. From 1976 to 2000, medical malpractice premiums in California increased by 167 percent, while premiums for the rest of the nation rose by 505 percent.[11]

Peter Paul Yu, MD, president of the Association of Northern California Oncologists, said, "MICRA does not completely immunize California physicians from the malpractice crisis because our insurers still need to access the re-insurance market to offload the risk," which is a common practice in the insurance industry.

His medical group's insurance carrier—The Doctor's Group—has had to raise its premiums substantially in the past two to three years because of this practice. As a result, his medical group has been taking a higher deductible, and putting aside an amount that will generate enough yearly interest earnings to completely pay the group's premiums, and allow the practice to have a higher deductible. This will require a sum in excess of $10 million.

Yu practices in The Camino Medical Group, a multispecialty group of 200 physicians that has four medical oncologists, and is a member of the Palo Alto Medical Foundation.

"I don't think that the malpractice issue has affected California oncologists greatly," said Yu, adding, "clearly we are much more concerned about reduced reimbursements by Medicare and private insurers" and the effect it has on quality of patient care.

Cary A. Presant, MD, FACP, who is one of three oncologists at California Cancer Medical Center in West Covina, Calif., said his practice has saved about 50 percent on its malpractice rates by its choice of mutual insurance carrier and then the mutual protection trust. Due to the medical liability climate, Presant said, "we are practicing more defensive medicine."

Wisconsin

Medical malpractice reform in Wisconsin has produced benefits for both patients and physicians in the state. In fact, physicians from other states are reported to be relocating to Wisconsin because the state's medical malpractice premiums are among the lowest in the country. A "2003 Rate Survey" by the *Medical Liability Monitor* showed that in Wisconsin, a state with a cap, some physicians saw as much as a 12.7 percent increase in rates, but others saw a 14.2 percent decrease.[13]

A combination of two factors has helped Wisconsin currently stave-off the medical liability crisis. In 1995 the state legislature passed a hard cap (meaning one award per occurrence) of $350,000 on non-economic damages. The cap is indexed for inflation, however, and has already risen to $423,000.[14]

The Injured Patients and Families Compensation Fund (formerly the Patients Compensation Fund) created in 1975 has also eased the burden by providing excess medical malpractice coverage for providers in the state.[14] Healthcare providers, specifically physicians and hospitals, are required to pay a yearly assessment into the Fund. For example, in 2001-02, family physicians and other general practice physicians who do not perform surgery each contributed $1,518, according to state records. Surgeons paid $6,302.[15]

Overall, the malpractice premiums being paid by a small physician practice in Wisconsin are reasonable and not a burden, said one of the medical oncologists in a 30-year-old practice. His malpractice rate has increased about 3 percent from 2002 to 2003 and is now about $3,800 for an individual policy. A colleague in the practice who does bone marrow procedures paid a slightly higher rate of about $6,400 in 2003. The practice's coverage is a minimum $1 million per occurrence and $3 million aggregate annually. Beyond that amount, the state fund picks up the coverage.

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Medical Malpractice Takes a Toll on Hospitals

ACCC-member hospitals in a number of states, including Pennsylvania, Connecticut, and Washington, are reeling from huge increases in premiums for medical liability insurance.

In July 2002 Grand View Hospital, a community, not-for-profit hospital in Sellersville, Pa., saw its insurance cost increase by almost 50 percent. Its deductible level went from $5 million to $7.5 million. On top of that, Grand View was being forced to accept a 50 percent "co-pay" for each $5 million above the $7.5 million for which the hospital secured coverage. Consequently, Grand View Hospital expected to spend in excess of $7,500 each day for its insurance coverage in fiscal year 2003—about the same amount that the hospital spends for medications and pharmaceuticals.[16]

According to Grand View Hospital's CEO Stuart H. Fine, the hospital has lost physicians specializing in general surgery and interventional radiology, for example, and has no neurosurgery coverage. The hospital's efforts at recruiting replacement physicians have proven fruitless.

In Connecticut, Saint Francis Hospital and Medical Center in Hartford reported an increase of over 187 percent or more than $6.1 million in its malpractice costs from 2000 to 2004, said the hospital's Senior Vice President Chris Hartley.[17]

"These escalating liability costs are having direct, detrimental effects on hospitals and physicians that the public at large may not as yet realize but will experience in the near future, often at the worse possible moment," Hartley said. "These include decreased access to care; real physician shortages [in ob/gyn, primary care, neurosurgery, among other specialties]; and the loss of the resources needed to keep pace with the advances in medicine." Furthermore, he said, "We are also experiencing increasing difficulty in recruiting new physicians to our community."

Patrick A. Charmel, CEO of Griffin Hospital in Derby, Conn., said that the New Haven area hospitals experienced an aggregate increase in malpractice insurance costs of $20 million over the most recent three-year period. He remarked that "$20 million had to be diverted from patient care delivery—$20 million that could not be invested in technology to improve patient safety."[18]

Charmel noted that high-risk surgical specialists now live in fear that a single untoward outcome can result in loss of coverage or a premium increase that forces them out of practice. "This fear leads to defensive medicine. The majority of physicians admit that they order more tests than their professional judgment tells them are medically necessary; they make more referrals to specialists; they perform more invasive procedures; and they prescribe more drugs—all to protect themselves against suit," Charmel added.

A survey by the Washington State Hospital Association, to which 46 hospitals responded, found that premium increases in 2002 averaged 60 percent. A half-dozen hospitals suffered premium hikes of 100 percent or more. Among them are Swedish Medical Center in Seattle, MultiCare Health System in Tacoma, Kittitas Valley Community Hospital in Ellesburg, and Deaconess Medical Center in Spokane.[19]

Swedish Medical Center, a large Seattle hospital with three campuses, shuddered as its medical liability premium in 2002 shot up to $8.2 million, more than double its 2001 premium of $4 million.[19]

Making matters worse was the huge increase in Swedish's deductible, from $2,500 to $100,000.

As a result, Swedish may have to fund nearly all liability claims out of its own budget, beyond what it pays for insurance.

Insurance supply is another problem facing some hospitals. For many rural hospitals in Washington state, Washington Casualty Co. is the *only* provider of medical liability coverage. In Tacoma, MultiCare Health System has had to change carriers twice as Fireman's Fund quit the medical liability market in 2000 and St. Paul Insurance Co. pulled out last year.[4]

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