

Ohio Medicine

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Medical Malpractice Reforms Are Starting to Bear Fruit in Ohio

story on page 3



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The spring of 2002 was not a happy one for many of Ohio's physicians. Skyrocketing professional liability insurance was unaffordable, sometimes even unobtainable, especially for those in high-risk specialties like obstetrics. Many physicians were considering retiring early, moving or eliminating high-risk procedures. The American Medical Association had placed Ohio on a list of states considered "in crisis."

The culmination of all of these events led to Ohio physicians banding together to take action at the state government level to reform Ohio's tort system, so that physicians could stay in practice and continue caring for Ohioans. In June 2002, SB 281 was introduced featuring a package of reforms to limit non-economic damages awarded in medical liability lawsuits. Tort reform had been passed before in the '90s, only to be ruled unconstitutional by the Ohio Supreme Court. This time, a major effort was made by Ohio physicians to elect fair and impartial candidates to the Ohio Supreme Court, with the OSMA's political action committee supporting Justices Evelyn Lundberg Stratton and Maureen O'Connor.

Where Are We Now?

SB 281 was signed into law in 2003 and took effect in April of that year. An additional measure, HB 215 was passed to require all entities that provide medical malpractice insurance to health care providers located in Ohio, including authorized insurers, surplus lines insurers, risk retention groups and self-insurers, to report data to the Ohio Department of Insurance regarding medical malpractice claims that close during the year. The first closed claim report, which will serve as a baseline for future reports, was issued in November of last year stating that 5,051 medical malpractice claims were closed in 2005 with an average indemnity – which is the amount of compensation paid on behalf of each defendant to a claimant – of \$269,374 for claims closed with payment.

Medical Malpractice Insurance Rate Changes Decrease

In addition, the Ohio Department of Insurance has documented the decline of medical liability insurance rates for 2007; the state's five largest medical malpractice insurers filed rate changes producing an average decrease of 6.4 percent in 2007. This translates into an average savings of \$1,000 per physician.

In 2006, the rate decrease was 1.7 percent. The rate decreases for 2006 and 2007 follow rate increases of 30 percent

in each of 2002 and 2003, 20 percent in 2004 and a 6.7 percent increase in 2005.

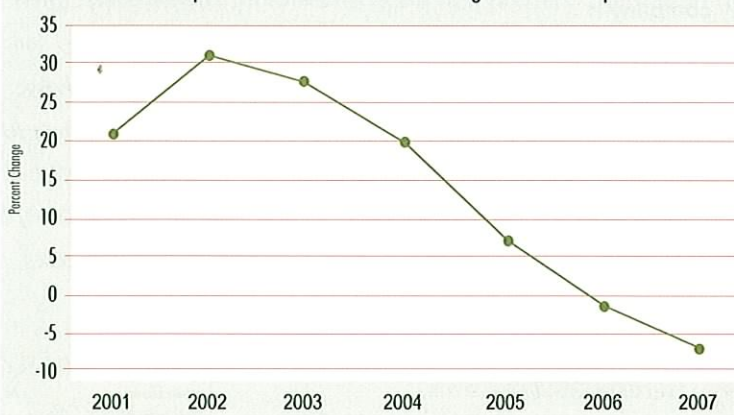
"Since tort reform was implemented, we've noticed a decrease in the number of claims being filed. The affidavit of merit requirement and damage caps help discourage suits that are frivolous, as well as those that are medically complex and unlikely to be profitable for plaintiff attorneys. American Physicians was able to lower our rates in both 2006 and 2007 – and we remain committed to providing Ohio's doctors with reliable coverage at a competitive price," said R. Kevin Clinton, president and chief executive officer, American Physicians Assurance Corporation.

There are other positive signs coming from the legal arena. Earlier this year, the Ohio Supreme Court released its 2006 Ohio Courts Summary. The report summarizes the numbers of all new cases filed in Ohio's courts in 2006. Of note to Ohio's physicians is that the filings for new product liability lawsuits and professional tort cases were the lowest in seven years.

There were 1,502 professional tort cases filed in 2006 seeking damages as a result of alleged malpractice on the part of a doctor or other professional.

In 2006, there were 348 product liability cases filed, compared with 928 filed in 2005. The higher number in 2005 is believed to reflect an attempt to file cases before the new limits on damage awards went into effect.

Ohio Medical Malpractice Insurance Rate Changes for the Top Five Insurers



Source: Ohio Department of Insurance

professional liability update

"The decrease in case filings is a positive sign for Ohio's physicians, and we believe that means that there will be fewer meritless lawsuits," said Almeta E. Cooper, OSMA General Counsel. "However, OSMA will remain vigilant in helping to defend physicians who have frivolous lawsuits filed against them."

"Insuring and defending Ohio's physicians has been OHIC's mission for more than 28 years," said Nancy Libke, AIC, vice president of claims for OHIC, a subsidiary of The Doctors Company. "The positive changes made by the tort reform effort are bringing needed stability to the medical malpractice insurance market. We are seeing fewer cases that have no merit being filed and as a result frequency is down. It has stabilized the medical malpractice insurance arena and enabled us to better forecast our reserves, which ultimately results in how rates are adjusted."

Trial Lawyers Get a Makeover

The change in the law and resulting decline in cases filed has certainly been a setback for Ohio trial lawyers. The Ohio Academy of Trial Lawyers vehemently opposed the changes contained in Senate Bill 281, and continues to insist that it does not help stabilize the medical malpractice insurance market. Interestingly, the Ohio Academy of Trial Lawyers has undergone an "extreme makeover" by changing their name to "Ohio Association for Justice."

The changes that have occurred since 2002 have had positive effects; medical liability insurance rates have stabilized and declined, and court case filings are down. However, physicians need to remain vigilant and engaged in the political process. To date, a case challenging Senate Bill 281 has not made it to the level of the Ohio Supreme Court. Until affirmed by the Ohio Supreme Court, physicians could face another situation similar to the 1990s when the tort-reform laws were overturned. With two seats on the Ohio Supreme Court up for re-election in November 2008, the OSMA will again work to support candidates with a judicial philosophy of interpreting the law, not rewriting it.

"As the medical liability issue demonstrates, by uniting together, physicians can affect change," said OSMA President Craig W. Anderson, MD. "While there is always room for improvement, let me assure physicians that thanks to our OSMA, Ohio is years ahead of other states in regard to medical liability reform. Our caps on non-economic damages, affidavit of merit and change in the make up of our Supreme Court are mere dreams to many other state medical associations."

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