

# *Ohio Chapter surveys members on professional liability issues*

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The threat of a medical malpractice lawsuit is part of the life of every physician, especially surgeons in the U.S. Malpractice insurance is considered part of the cost of the “business” of practicing medicine and surgery. The medical liability insurance market cycles like all business. In the past when the cost of medical malpractice insurance escalated, physicians and surgeons either formed their own insurance companies, worked harder to pay the premiums, or attempted to implement tort reform. Some states, such as California and Indiana, have implemented tort reform, but the vast majority of states have not. Even physician-owned insurance companies have been unable to control the increasing cost of malpractice awards. In a time of decreasing reimbursement, all physicians are working harder just to maintain the status quo. The significant increase in malpractice costs at this time has left the medical community with very few options.

Escalating jury awards, along with the general negative effects of 9/11 on the insurance industry, have caused many companies not only to significantly increase medical malpractice premiums, but to drop medical malpractice insurance as a losing venture. As a result, many physicians are scrambling to find malpractice coverage. This situation has created a medical malpractice crisis in our neighboring states of West Virginia and Pennsylvania and an extreme tightening of the malpractice market in Ohio. To assess the impact of the malpractice situa-

tion on Ohio Chapter members, the health policy and advocacy committee surveyed the chapter membership before our annual chapter meeting in May.

## Methods and results

Two other ACS chapters—New Jersey and Kentucky—had already developed an instrument to study the same malpractice issues. The Executive Committee of the Ohio Chapter reviewed both surveys for use in Ohio. The survey was distributed to approximately 1,000 Fellows and Associate Fellows about two weeks before the annual meeting. A modified version of the ACS New Jersey Chapter's survey, it was a one-page form with several questions about the effects of medical malpractice insurance on the individual surgeon.

On short notice, 214 replies were received for a 21.4 percent return, representing the best response to a mailing in the chapter's recent history. The answers were codified and then entered into a database for further analysis.

Most respondents (72%) were general surgeons. The majority of the respondents also had group coverage (57.9%), while 38.7 percent had solo coverage. Amazingly, 3.2 percent of the respondents did not know what kind of coverage they had. The majority (56%) had 1M/3M coverage, with a large minority (33.6%) having 2M/6M limits. The median premium of all the respondents who filled in a figure was \$38,000. Another 15.4 percent of the respondents did not indicate any value.

## *Ohio surgeons' professional liability survey*

Please complete and mail this survey immediately to:

Ohio Chapter, American College of Surgeons  
P.O. Box 2307, Dayton, OH 45401-2307  
Or fax to: 937/586-3699

1. My specialty: \_\_\_\_\_ My coverage is: Solo \_\_\_ Group \_\_\_  
My coverage limit: \$ \_\_\_\_\_ Approx. annual premium: \$ \_\_\_\_\_
2. My malpractice rate has been unaffected: Yes\_\_\_ No\_\_\_
  - a) Because my private insurer has not changed my rate: Yes\_\_\_ No\_\_\_
  - b) I am employed and my employer pays the premium: Yes\_\_\_ No\_\_\_
  - c) Other: \_\_\_\_\_
3. While my malpractice rate has been increased, it remains at a "tolerable" level:
  - a) Less than 10% increase: Yes\_\_\_ No\_\_\_
  - b) 10-40 %: Yes\_\_\_ No\_\_\_
  - c) Greater than 40%: Yes\_\_\_ No\_\_\_
4. Increases in my malpractice premium are unconscionable and I will seriously need to consider:
  - a) Early retirement from practice: Yes\_\_\_ No\_\_\_
  - b) Leaving the state: Yes\_\_\_ No\_\_\_
  - c) My carrier's name: \_\_\_\_\_
5. I have been denied coverage: Yes\_\_\_ No\_\_\_ By carrier: \_\_\_\_\_
6. I have had to lay off staff: Yes\_\_\_ No\_\_\_ If yes, how many? \_\_\_\_\_
7. I have dropped the following procedures: \_\_\_\_\_
8. Have you changed carriers in the last two years? Yes\_\_\_ No\_\_\_
9. Were terms downgraded at last renewal? (Maximum benefit? Occurrence vs. claims made? Tail coverage?) Yes\_\_\_ No\_\_\_  
If yes, explain: \_\_\_\_\_
10. I am willing to tell my story to the legislature or otherwise assist in your efforts to curb the runaway costs of medical malpractice insurance: Yes\_\_\_ No\_\_\_

If yes, I can be contacted as follows:

Name: \_\_\_\_\_  
Address: \_\_\_\_\_  
City: \_\_\_\_\_ Phone: \_\_\_\_\_  
Fax: \_\_\_\_\_ E-mail: \_\_\_\_\_

Thank you for your response. Collective data such as these are needed to present a credible account to the state legislators and other regulatory authorities. Anonymous results of this poll will be made available to all members. (This survey was modeled after the New Jersey Chapter ACS professional liability survey.)

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In response to the survey, the overwhelming majority (90.6%) said that they were being affected by the increase in malpractice premiums, with 85.5 percent of the respondents listing increases in their malpractice rates. Only 9.8 percent of the respondents said malpractice premiums increased less than 10 percent; 47 percent increased 10 to 40 percent, and 43.1 percent of the respondent's premiums increased more than 40 percent.

A small minority of the respondents (6.5%) had been denied coverage. Denial of coverage did appear to have some significant effects on practice behavior, with 45.8 percent of respondents considering early retirement and 29 percent considering relocation.

In general, respondents have not laid off staff (82.2%) or dropped procedures (85%). Instead, to counteract changes in premiums, 37.3 percent of respondents have changed carriers, and a surprising 26 percent of respondents have downgraded coverage. This issue seems to have electrified the Ohio Chapter members, with 62.6 percent of the respondents willing to devote their time to achieving legislative changes.

## Discussion

The Ohio Chapter has had a long-standing interest in professional liability issues. Surveys were conducted in 1969, 1974, and 1981. The 1981 survey was published in the *Bulletin*.<sup>\*</sup> In contrast to the 1981 survey, which had a return rate of 40 percent and of which only 41 percent of the respondents were general surgeons, approximately three-quarters of our recent respondents were general surgeons, and we considered our return rate of 20 percent to be excellent considering the short turnaround time provided.

In the past, only 21 percent of the respondents had group coverage, whereas now the majority of the recent respondents had group coverage (58%) Reminiscent of a different time, only approximately 25 percent of surgeons paid over \$10,000 and only 1 percent paid more than \$25,000 according to the previous survey. The median premium for recent respondents was \$38,000.

In the 1981 survey, a small minority of surgeons

(8.1%) were having difficulty obtaining malpractice insurance, but they were finding insurers. In the current survey, 6.5 percent of our respondents had been denied coverage. Only 27 percent of the respondents in the 1981 survey experienced premium increases of more than 100 percent in a five-year time period. Compare that with 90 percent of our respondents who had increases of greater than 10 percent in the last year, and 40 percent who had greater than 40 percent increases in the last year. Unlike previous surveys, ours did not examine the number of lawsuits filed or attitudes toward malpractice. Unfortunately, in today's environment, it is just part of practicing medicine.

As mentioned previously, our survey was a modified version of one the New Jersey Chapter conducted. We can compare our results with those of the New Jersey Chapter, thanks to their willingness to share their preliminary results.<sup>†</sup> Only 47 percent of their respondents were general surgeons. Among New Jersey general surgeons, 69 percent noticed increases of more than 10 percent in their premiums, but only 17 percent reported increases of greater than 40 percent, while 43 percent of the Ohio Chapter respondents had a premium increase of greater than 40 percent.

Our median premium and the mean for the general surgeons in New Jersey were similar at \$38,000 and \$36,000 respectively. To lower overhead costs, the New Jersey general surgeons were laying off staff at a rate similar to Ohio surgeons, 24 percent and 18 percent respectively. While 37 percent of Ohio surgeons are changing malpractice carriers, 43 percent of New Jersey surgeons were doing so. No mention of early retirement or changing practice sites was made in the New Jersey survey.

The impact of the sharp increase in professional liability premiums may be significant in a state such as Ohio where there is a large rural area that has a difficult time attracting young surgeons. Almost 50 percent of the respondents are considered

*continued on page 54*

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<sup>†</sup>Personal communication with Robert W. Hobson, MD, FACS, June 2002.

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<sup>\*</sup>Miller SF: Ohio professional liability survey, 1981. *Bull Am Coll Surg*, 67(3):6-8.

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the scientific exhibits at the eighty-ninth annual Clinical Congress to be held October 19-23, 2003, in Chicago, IL. The abstract submission form will be available in January. Please request the submission form from Lisa Richards, Division of Education, at tel. 312/202-5385 or via e-mail at [lrichards@facs.org](mailto:lrichards@facs.org). The abstracts will be peer re-

viewed by the Program Committee and the most competitive abstracts will be accepted, based on the space available for the exhibits. There is no charge for the scientific exhibit display space. However, exhibitors must pay their own shipping and assembly costs. The submission deadline for abstracts is **March 3, 2003**.

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## Contributions to the 2003 Surgical Forum are requested

The Committee for the Forum on Fundamental Surgical Problems, Division of Education, invites surgical investigators in training to submit abstracts to be considered for presentation during the Surgical Forum at the eighty-ninth annual Clinical Congress, Chicago, IL, October 19-23, 2003. The Surgical Forum program highlights abstracts reporting original work performed by surgical investigators in training.

Accepted abstracts will appear in a supplement of the *Journal of the American College of Surgeons (JACS)*, a publication recognized by *Index Medicus*. Full manuscripts may be subsequently submitted to *JACS* or other journals. Abstracts are reviewed and selected by the Forum Committee for each surgical specialty. *Abstracts are graded by committee members most familiar with the abstract's designated category.* Following the grading, the full committee selects the abstracts to be presented at the Clinical Congress.

The submission process will begin on December 1, 2002, and the deadline for submission is

**March 1, 2003**. Notice of acceptance or rejection will be mailed to the principal author of each abstract by May 1. Please read the following specifications.

### ***Submission guidelines***

Abstracts should be submitted via the ACS web site at: <http://www.facs.org/sfabstracts/index.html>.

- Submission begins on December 1, 2002. A reference number will be generated upon receipt of the electronic submission.
- The deadline for submissions is 5:00 pm (CST) **March 1, 2003**.
- Abstracts may not be submitted to any other venue; if duplicate submission is detected the abstract will be deleted before review.

### ***Notification of selection***

The principal author will be notified in writing about abstract selection by May 1, 2003. If you have questions, please contact [kkoenig@facs.org](mailto:kkoenig@facs.org) or directly at 312/202-5336.

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## **SURVEY, from page 14**

ing early retirement. These individuals may disproportionately practice in smaller and older rural practices.

The fact is, the malpractice situation eventually will affect the access to medical and surgi-

cal care for the citizens of the state of Ohio. It appears that the only option at this time is to push our legislators for tort reform before this issue becomes a crisis for patients needing quality medical care. 