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Medical Malpractice Insurance Claims in Seven States, 2000-2004

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Insurance companies in Florida, Illinois, Maine, Massachusetts, Missouri, Nevada, and Texas reported information on about 43,000 closed medical malpractice insurance claims between 2000 and 2004. In these states licensed medical malpractice insurance providers are required by law to submit data on closed claims to a central state agency, typically the Department of Financial and Insurance Regulation. The collection agency in these states provided the data to the Bureau of Justice Statistics (BJS).

Most medical malpractice claims were closed without any compensation provided to those claiming a medical injury (claimant). About a third of closed medical malpractice insurance claims in Maine, Missouri, and Nevada resulted in an insurance payout. In Illinois 12% of closed claims had a payout.

For closed medical malpractice insurance claims that resulted in compensation for the claimant, fewer than 10% of the claims in Florida, Maine, Missouri, and Nevada had a payout of \$1 million or more. In Florida, Maine, and Missouri about two-thirds of the claims were closed with an insurance payout of less than \$250,000.

Among persons receiving compensation, insurance payouts were highest for claimants who suffered lifelong major or grave permanent injuries and lowest for claimants who suffered temporary or emotional injuries. In Florida and Missouri claimants with major or grave permanent injuries received median payouts ranging from \$278,000 to \$350,000. By comparison, claimants in these states who suffered various types of temporary or emotional injuries received median payouts ranging from \$5,000 to \$79,000.

Medical malpractice insurance payouts increased as the insurance claims advanced through the legal system. Payouts were typically lowest for claims closed prior to the filing of a lawsuit and highest for claims closed after a trial. In Florida, Nevada, and Texas claims decided by trial

Few medical malpractice insurance claims resulted in payouts of \$1 million or more, 2000-2004

State and type of health care provider	Percent distribution of insurance payouts			
	Under \$100,000	\$100,000- \$249,999	\$250,000- \$999,999	\$1 million or more
Any type of health care provider				
Florida	42.7%	23.5%	28.4%	5.5%
Maine	45.7	22.4	24.4	7.4
Missouri	46.9	25.1	24.6	3.5
Texas*	32.7	28.2	28.5	10.6
Physicians and surgeons only				
Illinois	20.6%	18.7%	43.7%	17.1%
Massachusetts	21.1	17.8	43.8	17.3
Nevada	32.4	20.1	39.0	8.5

Note: Based on closed medical malpractice insurance claims that resulted in a payout. Insurance payouts were adjusted for inflation using the Consumer Price Index (CPI) in 2004 dollars. CPI is available at <http://www.bls.gov/cpi/home.htm>.

*Includes only medical malpractice claims with insurance payouts of more than \$10,000.

resulted in median payouts that were at least 2½ times larger than claims that were settled. Medical malpractice claims that closed after trial also cost more for insurance firms to defend than claims settled prior to trial.

In general, claimants did not file medical malpractice claims with insurance companies immediately after injury. In Florida, Missouri, and Texas medical malpractice claims were filed with insurance companies an average of 15 to 18 months after an injury. After claims were received, it took an average of 26 to 29 additional months to close the claim.

Insurance companies reported that physicians, surgeons, and hospitals were the most common type of medical provider named in medical malpractice insurance claims. These claims indicated that alleged injuries occurred more frequently in hospital inpatient facilities than in hospital outpatient facilities, doctors' offices, or emergency rooms.

Seven states provided medical malpractice data to BJS

Medical malpractice has been a major issue in the Nation's debate over health care costs and tort reform. Seven states — Florida, Maine, Missouri, Texas, Illinois, Massachusetts, and Nevada — were identified by the National Association of Insurance Commissioners (NAIC) as having comprehensive medical malpractice insurance claims databases.¹ The information collected by these states covered a range of key items, including the number of claims closed with or without payouts, types of medical providers named in claims, facilities where alleged injury occurred, severity of alleged injury, court disposition of claims, amounts paid to compensate claimants, costs of defense counsel, and claim processing time. (See Appendix table A.)

The number of medical malpractice claims closed between 2000 and 2004 differed considerably across the seven states. Differences in state population, number of health care providers, overall litigation environment, and scope of data collected may contribute to a higher number of closed claims in some states compared to other states. (See *Meth-odology*.)

Florida, Maine, Missouri, and Texas collected medical malpractice claims data involving physicians, surgeons, hospitals, nursing homes, dentists, and other health care providers. In comparison, Illinois, Massachusetts, and Nevada collected data involving only physicians or surgeons. Also Florida and Massachusetts did not collect data on claims closed without an insurance payout. In Texas detailed medical malpractice insurance claims data were collected only for closed claims that had an insurance payout of more than \$10,000. For these reasons, data in this report should not be used to compare medical malpractice insurance litigation across states.

Prior BJS reports on medical malpractice focused on only those medical malpractice claims that ended in trial. (See box on page 3.) This report describes a broader scope of medical malpractice litigation by examining medical malpractice insurance claims that were settled prior to or after a lawsuit in addition to those ending in trial.

Few medical malpractice claims were closed with a payout

Most medical malpractice insurance claims were closed without a payout to the person seeking compensation for the alleged medical injury. In Maine (34%), Missouri (31%), and Nevada (38%), about a third of medical malpractice claims were closed with a payout (table 1). In Illinois about 12% of closed claims resulted in a payout.

¹NAIC is a clearinghouse for insurance regulators in all 50 states and the U.S. territories. Further information about NAIC may be obtained at <<http://www.naic.org/>>.

Table 1. Closed medical malpractice insurance claims, 2000-2004

State and type of health care provider	Number reported	Closed claims with a payout	
		Number	Percent
Any health care provider^a			
Florida ^b	8,519	8,519	~
Maine	1,136	386	34.0%
Missouri	8,379	2,598	31.0
Texas ^b	6,251	6,251	~
Physicians or surgeons only^c			
Illinois	16,016	1,945	12.1%
Massachusetts ^b	1,485	1,485	~
Nevada	1,254	472	37.6

~Not applicable.

^aFlorida, Maine, Missouri, and Texas collected medical malpractice claims data involving physicians, surgeons, hospitals, nursing homes, dentists, and other health care corporations and clinics.

^bFlorida and Massachusetts did not collect data on closed claims without a payout. Texas data were limited to closed claims with a payout of more than \$10,000.

^cIllinois, Massachusetts, and Nevada collected medical malpractice data involving physicians or surgeons only.

What is a medical malpractice insurance claim?

A medical malpractice insurance claim arises when a person (the claimant) alleges that negligent medical treatment resulted in an injury. The treatment may have been provided by a physician, surgeon, or other health care professional or an organization, such as a hospital, clinic, or nursing home.

In a typical medical malpractice claim, the person claiming an injury or a related family member retains an attorney to file a claim with the medical provider's insurance carrier requesting compensation for the injury. After a claim is filed, the insurance carrier may settle, negotiate with the claimant over the amount of compensation, or refuse to compensate the claimant. If the parties do not come to an agreement, the claimant's attorney may file a lawsuit in the appropriate court or abandon the claim.

Some states require review of medical malpractice claims before a panel of experts prior to a lawsuit, while other states mandate arbitration or alternative dispute resolution as a means of resolving medical malpractice claims. The filing of a lawsuit may produce several outcomes. These include the settlement of the case prior to or during trial, a trial decision in favor of the claimant or the defendant, or the dismissal of the case by the court. Claims may also be abandoned or withdrawn after a lawsuit.

Table 2. Type of health care provider involved in closed medical malpractice insurance claims, by state, 2000-2004

Health care provider	Percent of closed claims in —		
	Maine ^a	Missouri ^a	Texas ^b
Hospitals	27.4%	18.3%	18.3%
Nursing homes	...	2.9	4.6
Physicians or surgeons	54.1	47.6	68.3
Dentists	...	4.6	3.1
Nurses	...	2.3	...
Other ^c	17.8	24.3	5.8
Don't know	0.7	0.0	0.0
Number of closed insurance claims	1,136	8,379	6,251

Note: The percentage of medical malpractice claims involving hospitals and other medical organizations may be underestimated as hospitals and other medical groups typically self-insure. Self-insured groups are typically not required to report closed claim information to state insurance regulators. Health care provider data were not reported from Florida. Illinois, Massachusetts, and Nevada collected medical malpractice data involving physicians or surgeons only.

... Data were not available.

^aIncludes claims closed with or without an insurance payout.

^bIncludes only claims with insurance payouts of more than \$10,000.

^cIncludes other types of medical providers not identified by the states.

Table 3. Facility where injury occurred in closed medical malpractice insurance claims, by state and health care provider, 2000-2004

Facility where injury occurred	Percent of closed claims		
	Any health care provider		Physicians or surgeons only
	Florida ^a	Missouri ^b	Illinois ^b
Hospital			
Inpatient facility	50.6%	49.2%	42.2%
Outpatient facility	4.8	3.4	4.4
Emergency room	10.5	9.4	3.0
Nursing home	0.9	3.2	1.2
Physician's office	10.1	20.1	24.0
Other ^c	23.1	10.3	24.9
Don't know	0.0	4.4	0.3
Number of closed insurance claims	8,519	8,379	16,016

Note: Data on facility where injury occurred were not reported from Maine, Massachusetts, Nevada, and Texas.

^aIncludes claims closed with an insurance payout.

^bIncludes claims closed with or without an insurance payout.

^cIncludes patients' homes, other outpatient facilities, and other facilities not identified by the states.

Majority of medical malpractice claims were brought against physicians or surgeons

Physicians or surgeons were the most common type of individual medical provider involved in medical malpractice insurance claims. They made up about half of medical providers involved in medical malpractice claims closed in Maine (54%) and Missouri (48%), and two-thirds of those in Texas (68%) (table 2).

Hospitals were the most frequent institutional party named in medical malpractice insurance claims. In Maine 27% of claims were against hospitals, while in Missouri and Texas hospitals accounted for about 18% of health care providers in closed claims. The number of institutional providers, such as hospitals, may be underestimated because these institutions often self-insure and self-insured institutions are not required to report closed claims.

Most injuries occurred at hospital inpatient facilities

Most medical malpractice injuries reported in closed insurance claims occurred in hospital inpatient facilities. About half of closed claims in Florida and Missouri and 42% of claims closed in Illinois involved injuries that occurred in hospital inpatient facilities (table 3). Physicians' offices accounted for 10% of the claims closed in Florida, 20% in Missouri, and 24% in Illinois.

Prior BJS medical malpractice data collections

Prior BJS reports on medical malpractice estimated that about 7% of medical malpractice lawsuits ended in a trial. (See *Tort Cases in Large Counties, 1992*.) BJS has also provided detailed information about medical malpractice trials in several reports examining civil trial litigation in the Nation's 75 most populous counties. (See *Civil Trial Cases and Verdicts in Large Counties, 2001*; *Medical Malpractice Trials and Verdicts in Large Counties, 2001*; and *Tort Trials and Verdicts in Large Counties, 2001*. These reports are available at <<http://www.ojp.usdoj.gov/bjs/civil.htm>>.)

These reports highlight three key findings:

- Plaintiffs won in about a quarter of medical malpractice trials.
- The estimated median trial award was about \$425,000.
- Between 1992 and 2001 the number of medical malpractice jury trials remained fairly stable but median trial awards increased by about 70%.

Females made up over half of insurance claimants

For states that provided data on gender, females comprised between 54% and 56% of medical malpractice claimants (table 4).

Table 4. Gender of claimant in closed medical malpractice insurance claims, by health care provider and state, 2000-2004

Gender of claimant	Percent of closed insurance claims			
	Any health care provider		Physicians or surgeons only	
	Florida ^a	Missouri ^b	Illinois ^b	Nevada ^b
Male	45.5%	44.4%	43.6%	46.1%
Female	54.5	55.6	56.4	53.9
Number of closed insurance claims	8,519	8,155	15,758	1,251

Note: Claimant gender data were available for 100% of claims in Florida, 97% in Missouri, 98% in Illinois, and 99.8% in Nevada. Claimant gender data were unavailable for Maine, Massachusetts, and Texas.

^aIncludes claims closed with an insurance payout.

^bIncludes claims closed with or without an insurance payout.

Few medical malpractice claims resulted in payouts of \$1 million or more

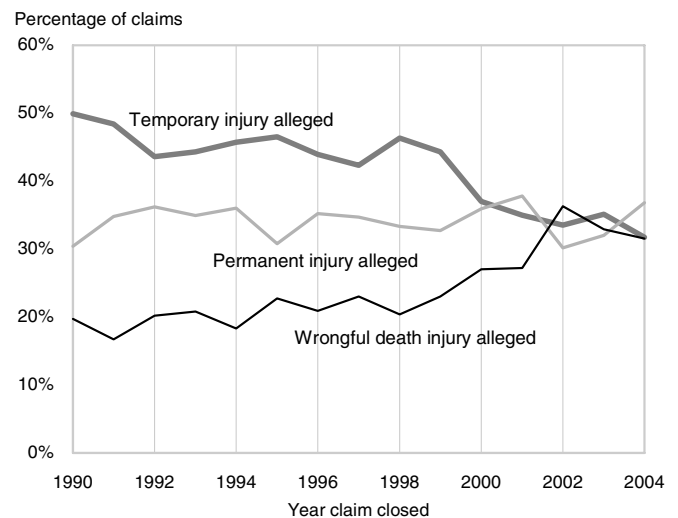
Insurance payouts typically compensate claimants for lost wages and medical bills (economic damages); pain, suffering and other emotional damages (noneconomic damages); and attorney fees and costs. In cases where the medical provider engaged in reckless or criminal behavior, punitive damages may be awarded to the claimant.

Overall, medical malpractice insurance claims with payouts of \$1 million or more occurred infrequently. Fewer than 10% of compensated medical malpractice claims resulted in payouts of \$1 million or more in Florida, Maine, Missouri, and Nevada (table 5). Insurance payouts of \$1 million or more accounted for 17% of paid claims in Illinois and Massachusetts, and 11% of paid claims in Texas.

In Missouri fewer claims involved temporary injuries; larger portions of claims involved wrongful death

In Missouri the percentage of claimants alleging more serious injuries has increased. In 1990 about half of closed medical malpractice claims involved temporary injuries, while wrongful deaths accounted for 20% of closed claims. By 2004 temporary and wrongful death injuries each accounted for about a third of closed medical malpractice claims.

The percentage of claims involving permanent injuries remained relatively stable between 1990 and 2004. On average about a third of closed medical malpractice claims involved permanent injuries. Increased expenses in litigating medical malpractice claims and changes in the strategies of plaintiff's lawyers in deciding which claims to litigate may explain this convergence of claims involving temporary and wrongful death injuries.



Note: Data are limited to medical malpractice claims closed with insurance payouts.

In states where data were collected on all health care providers, the majority of compensated medical malpractice insurance claims resulted in payouts of less than \$250,000. In Missouri 72% of medical malpractice claims were closed with payouts of less than \$250,000, while in Florida and Maine about two-thirds of the claims had payouts of less

than \$250,000. Sixty-one percent of closed claims in Texas also had payouts of less than \$250,000.

In Illinois, Massachusetts, and Nevada, where data were available on physicians or surgeons only, approximately 40% to 50% of claims resulted in payouts of less than \$250,000.

Table 5. Percent of insurance payouts in closed medical malpractice insurance claims, by health care provider and state, 2000-2004

Payout amount	Any health care provider				Physicians or surgeons only		
	Florida	Maine ^a	Missouri	Texas ^b	Illinois	Massachusetts	Nevada
Under \$100,000	42.7%	45.7%	46.9%	32.7%	20.6%	21.1%	32.4%
100,000 to 249,999	23.5	22.4	25.1	28.2	18.7	17.8	20.1
250,000 to 499,999	19.6	14.2	16.2	15.6	20.4	22.9	23.1
500,000 to 999,999	8.8	10.2	8.4	12.9	23.3	20.9	15.9
\$1 million or more	5.5	7.4	3.5	10.6	17.1	17.3	8.5
Median insurance payouts	\$133,000	\$110,000	\$107,000	\$195,000	\$350,000	\$341,000	\$225,000
Number of claims closed with a payout	8,519	352	2,598	6,251	1,945	1,485	472

Note: Data include medical malpractice insurance claims closed with an insurance payout. Insurance payouts were adjusted for inflation using the Consumer Price Index (CPI) in 2004 dollars. CPI available at <<http://www.bls.gov/cpi/home.htm>>.

^aActual dollar amounts were available for 91% (352 of 386) of claims closed with a payout.

^bIncludes only medical malpractice insurance claims with an insurance payout of more than \$10,000.

In Nevada diminished life expectancy and disfiguring injuries were more likely to result in a payout than non-physical emotional injuries

States differ in the way that they collect information on the type of physical injury reported in a medical malpractice claim. Nevada, Maine, Massachusetts, and Texas use their own coding schemes and detailed text fields to describe the type of injury alleged by the claimant. Florida, Missouri, and Illinois use the National Association of Insurance Commissioners' (NAIC's) injury scale to describe injuries alleged in medical malpractice claims. (See scale on page 6.)

In Nevada death is the most common type of medical malpractice injury reported in closed claims. This is followed by injuries resulting in "prolonged care or recovery" and "nervous system damage."

In Nevada over a third of all medical malpractice claims closed between 2000 and 2004 resulted in a payout. "Diminished life expectancy" and "disfigurement" injuries were more likely to result in a payout compared to those claims in which the claimant died. "Non-physical injuries" and "pain" resulted in a payout for claimants about 15% of the time.

Type of injury	Total number of claims	Percent of injuries where claimant —	
		Received payment	Did not receive payment
Total	1,226	38.0%	62.0%
Death	331	36.9%	63.1%
Physical injuries			
Diminished life expectancy	30	66.7%	33.3%
Disfigurement	55	54.5	45.5
Nervous system damage	108	53.7	46.3
Reproductive system damage	12	50.0	50.0
Foreign body left after surgery	34	47.1	52.9
Birth injury	32	46.9	53.1
Organ injury	54	46.3	53.7
Diminished use of limbs	52	46.2	53.8
Loss of limb/organ	38	42.1	57.9
Optical/sensory injury	34	41.2	58.8
Circulatory injury	27	40.7	59.3
Disease	31	38.7	61.3
Prolonged care or recovery	137	30.7	69.3
Infection	60	26.7	73.3
Side effects	38	18.4	81.6
Bone damage	23	17.4	82.6
Pain	41	14.6	85.4
Other*	26	46.2	53.8
Non-physical emotional injuries	63	15.9%	84.1%

Note: Injury data were available for 98% of closed claims.

*Includes dental injuries, dermal injuries, muscular/limb injuries, and cases where the wrong organ was removed.

Medical malpractice insurance payouts were higher for major or grave permanent injuries than for temporary or emotional injuries

States using the National Association of Insurance Commissioners' (NAIC's) injury scale rank medical malpractice injuries according to escalating levels of severity. The NAIC's injury scale codes injuries with values that range from one for emotional injury only to nine indicating that the claimant died. (See adjacent description for scale and type of injuries.)

Excluding wrongful death, the major and grave permanent categories include the most serious types of injuries that may occur in medical malpractice insurance claims. Claimants who suffer these types of injuries often have sizeable medical bills, require potentially lifelong medical care, or incur substantial losses in earned income. The median insurance payouts for claimants who had major or grave permanent injuries ranged from \$278,000 to \$350,000 in Florida and Missouri and approached nearly \$1 million in Illinois. By comparison, the median insurance payouts for claimants who suffered emotional, insignificant, or minor temporary injuries ranged from \$5,000 in Missouri to \$64,000 in Illinois.

The median insurance payouts in medical malpractice cases with wrongful death claims were lower than in cases in which the claimant suffered major or grave injuries. Since wrongful death claims would not involve more costly long term medical care, they often result in less compensation than claims in which long term medical care is needed.

National Association of Insurance Commissioners' (NAIC's) severity of injury scale and type of injuries:

- **Death (09)** — resulted in death of claimant.
- **Permanent injury**
 - **grave (08)** — quadraplegia, severe brain damage, lifelong care or fatal prognosis.
 - **major (07)** — paraplegia, blindness, loss of two limbs, brain damage.
 - **significant (06)** — deafness, loss of limb, loss of eye, loss of one kidney or lung.
 - **minor (05)** — loss of fingers, loss or damage to organs. Includes non-disabling injuries.
- **Temporary injury**
 - **major (04)** — burns, surgical material left, drug side effects, brain damage. Recovery delayed.
 - **minor (03)** — infections, misset fractures, fall in hospital. Recovery delayed.
 - **insignificant/slight (02)** — lacerations, contusions, minor scars, and rash. No delay in recovery.
- **Emotional injury only (01)** — fright, no physical damage.

Number and median payout of medical malpractice insurance claims, by severity of injury, 2000-2004

NAIC's severity of injury scale	Any health care provider				Physicians or surgeons only	
	Florida		Missouri		Illinois	
	Number	Median payout	Number	Median payout	Number	Median payout
Total	8,519	\$133,000	2,598	\$107,000	1,945	\$350,000
Death (09)	2,450	\$216,000	811	\$172,000	687	\$457,000
Permanent	3,281	\$210,000	893	\$193,000	879	\$420,000
Grave (08)	424	278,000	99	333,000	152	989,000
Major (07)	591	321,000	193	350,000	225	618,000
Significant (06)	860	250,000	255	210,000	243	400,000
Minor (05)	1,406	108,000	346	83,000	259	220,000
Temporary	2,582	\$50,000	846	\$28,000	362	\$124,000
Major (04)	842	79,000	308	48,000	207	210,000
Minor (03)	1,371	50,000	452	25,000	130	64,000
Insignificant/slight (02)	369	16,000	86	5,000	25	16,000
Emotional only (01)	206	\$25,000	48	\$26,000	17	\$33,000

Note: Injury severity data were not presented for Maine, Massachusetts, Nevada, and Texas because they do not code injuries according to the NAIC's injury severity scale. Insurance payouts were adjusted for inflation using the Consumer Price Index (CPI) in 2004 dollars. The CPI is available at <<http://www.bls.gov/cpi/home.htm>>.

Table 6. Number of closed claims with an insurance payout and median payout, by type of disposition, 2000-2004

State and type of health care provider	Claims closed by settlement							
	All settlements		Prior to lawsuit		After lawsuit but prior to trial verdict or judgment		Claims closed after trial verdict or judgment	
	Number	Median payout	Number	Median payout	Number	Median payout	Number	Median payout
Any health care provider								
Florida ^a	8,298	\$131,000	2,014	\$72,000	6,284	\$158,000	156	\$322,000
Maine ^b	332	107,000	--	--	--	--	16	418,000
Missouri ^c	2,516	105,000	627	18,000	1,889	150,000	81	342,000
Texas ^d	6,089	191,000	543	53,000	5,546	202,000	162	497,000
Physicians or surgeons only								
Nevada	448	\$218,000	--	--	--	--	24	\$551,000

Note: Insurance payouts were adjusted for inflation using the Consumer Price Index (CPI) in 2004 dollars and rounded to the nearest thousand. Medical malpractice insurance claim disposition data were unavailable for Illinois and Massachusetts.

-- Data not available.

^aDisposition data were available for 99% (8,454 of 8,519) of claims closed with an insurance payout.

^bDisposition data were available for 90% (348 of 386) of claims closed with an insurance payout.

^cDisposition for one paid claim was unknown.

^dIncludes only medical malpractice insurance claims with insurance payouts of more than \$10,000.

About 95% of medical malpractice insurance claims settled prior to trial

Most medical malpractice insurance claims that resulted in a payout were settled prior to being decided by a jury or bench (judge) trial. In Florida, Maine, Missouri, and Texas 5% or less of these claims reached a trial decision (table 6).

For claims that were settled prior to a trial decision, the settlement was reached in most cases after a lawsuit had been filed in court. Of the nearly 8,300 claims settled in Florida, about 6,300 were concluded after a lawsuit was filed, but prior to a trial decision.

Insurance payouts increased as claims moved through the legal system

Insurance payouts for medical malpractice insurance claims decided by trial were substantially larger than claims that were settled. In Florida, Texas, and Nevada the median insurance payouts were at least 2½ times larger for claims that reached a trial decision compared to claims that were settled. In Maine and Missouri median payouts were at least 3 times larger for claims decided by trial than claims that were settled. By comparison, in Florida, Missouri, and Texas median settlement payouts were lowest for medical malpractice claims settled prior to the filing of a lawsuit.

In Texas median payouts for claims resolved through alternative dispute resolution (ADR) were nearly the same as non-ADR claims

Nearly a third of the medical malpractice claims closed in Texas between 2000 and 2004 were resolved through alternative dispute resolution (ADR). This procedure refers to settling disputes by means other than formal litigation. The litigants typically meet with a third party who assists in resolving the dispute. Although Texas does not require that medical malpractice claims be referred to ADR, many parties participated in various ADR programs.

	Number of claims	Median insurance payouts
Settled prior to lawsuit	543	\$53,000
Alternative dispute resolution	219	50,000
No alternative dispute resolution	324	55,000
Settled after lawsuit filed in trial court	5,546	\$202,000
Alternative dispute resolution	1,686	210,000
No alternative dispute resolution ^a	3,860	200,000
Trial verdict or judgment^b	162	\$497,000

Note: Insurance payouts adjusted for inflation in 2004 dollars using the CPI index and rounded to the nearest thousand. Texas data limited to medical malpractice claims with insurance payouts of more than \$10,000.

^aIncludes claims settled during trial but before verdict or judgment.

^bIncludes claims closed after trial verdict or judgment.

The decision to seek resolution through an ADR program did not impact overall payout amounts. Medical malpractice claims settled through ADR prior to a lawsuit produced slightly lower payouts (\$50,000) compared to claims that were not resolved through ADR (\$55,000). Among medical malpractice claims that settled after a lawsuit was filed in trial court, the median insurance payouts were slightly higher for ADR (\$210,000) as opposed to non-ADR (\$200,000) resolved claims.

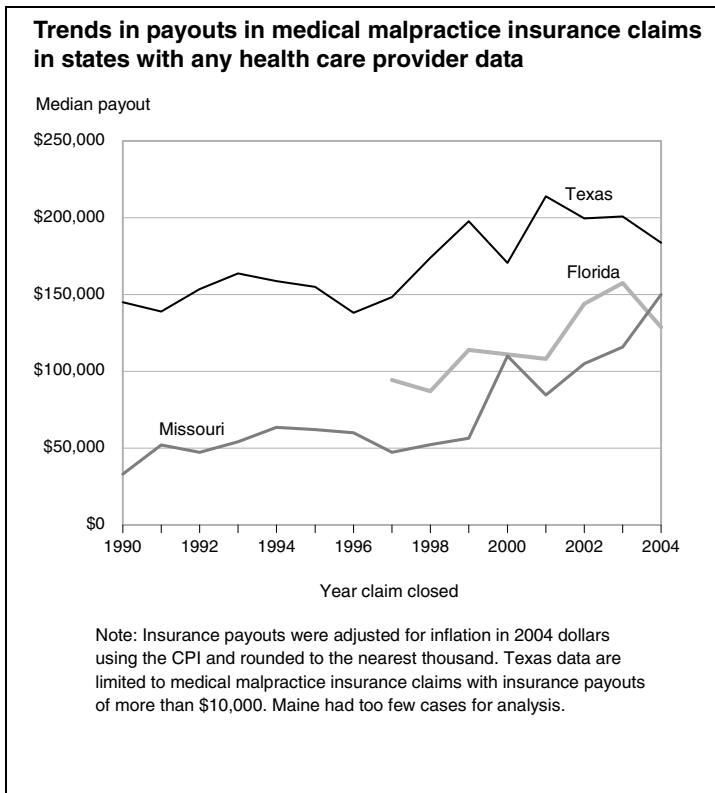


Figure 1

Medical malpractice insurance payouts have increased

The median damages paid to medical malpractice claimants have increased since the early to late 1990s. In Missouri, for example, the median insurance payouts grew from \$33,000 in 1990 to \$150,000 in 2004, an increase of more than 350%. During the various time periods, median payouts also increased by 57% in Massachusetts, 49% in Illinois, 36% in Florida, 26% in Nevada, and 27% in Texas (figures 1 and 2). Growing health care costs and an increasing effort by many attorneys to litigate only those medical malpractice claims involving severe injuries or wrongful death claims may explain some of these increases.

Medical malpractice claims closed after trial cost more to defend than claims settled prior to trial

The median loss adjustments paid to defense counsel were higher for claims closed through trials than settlements. Loss adjustments cover the amount insurance companies pay their legal counsel for investigating, settling, and trying their insurance claims. In Florida, Maine, and Nevada, median loss adjustments were at least 4 times greater for medical malpractice claims closed after trial than they were for claims settled prior to trial (table 7). The expenses associated with litigating a claim to the completion of a trial — including completed discovery, preparation of key witnesses, expert testimony, and jury selection — all contribute to higher defense counsel costs for claims decided by trial.

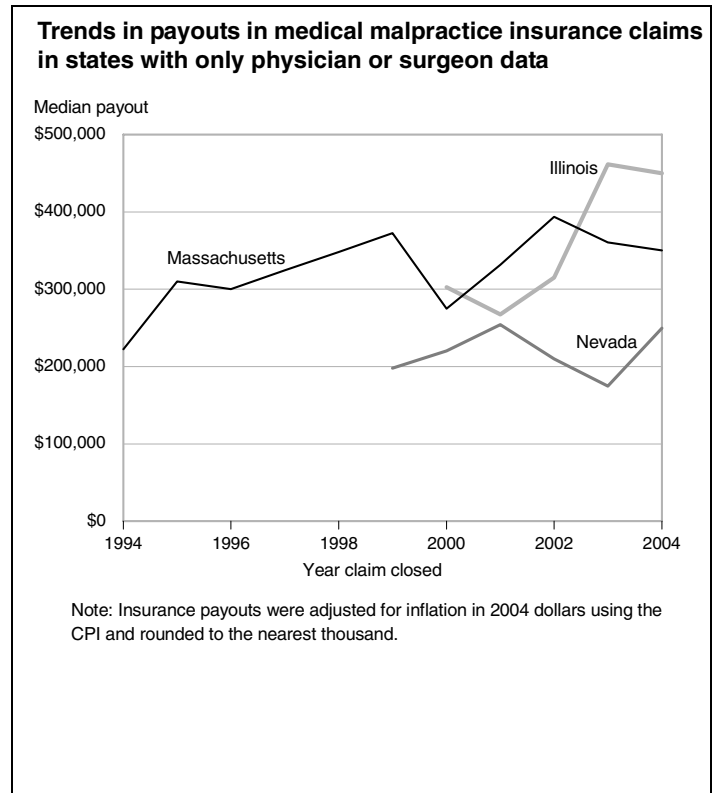


Figure 2

Table 7. Median loss adjustment expenses by type of claim disposition in closed medical malpractice insurance claims with insurance payouts, 2000-2004

States and type of health care provider	Prior to trial verdict or judgment (settled)		After trial verdict or judgment (trial)	
	Number of claims	Median loss adjustment expense	Number of claims	Median loss adjustment expense
Any type of health care provider				
Florida	6,624	\$30,000	142	\$136,000
Maine	298	19,000	15	94,000
Missouri	1,717	21,000	79	54,000
Texas*	5,831	46,000	160	127,000
Physicians or surgeons only				
Nevada	386	\$23,000	22	\$85,000

Note: Loss adjustments cover the amount insurance companies pay to their legal counsel for investigating and settling insurance claims, including cost of defending a lawsuit in court. Not all claims closed with an insurance payout resulted in a loss adjustment expense. Loss adjustment expenses were adjusted for inflation in 2004 dollars using the Consumer Price Index (CPI) and were rounded to the nearest thousand. Loss adjustment and claim disposition data were unavailable for Illinois and Massachusetts.

*Includes only medical malpractice claims with insurance payouts of more than \$10,000. Texas loss adjustments include costs insurers pay to defense counsel and other administrative costs for processing insurance claims.

On average, 15 to 24 months elapsed before a medical injury was reported to insurance carriers

Medical malpractice insurance claims were typically not reported to insurance carriers immediately after injury. In Florida an average of 15 months passed before claimants reported the injury to insurance providers. In Nevada an average of 24 months passed before medical injuries were reported.

In Florida, Texas, and Missouri, an average of nearly 4 years passed from initial injury to the closure of the claim. Once the insurance company received a claim in these three states, an average of 26 to 29 additional months passed before claims were closed and the claimant compensated.

For Nevada and Illinois medical malpractice claims took slightly more than 5 years to close after injury. In these states an average of 22 to 24 months passed before claims were reported to the insurance carrier. An additional 38 to 45 months passed before the claims were closed.

Several factors influence the decision concerning when to file a medical malpractice claim, including statute of limitations restrictions and the need to ascertain various medical, work-related, and pain and suffering expenses.

State and type of health care provider	Average number of months from —			Percent of total time from injury to reporting date
	Injury to reporting	Reporting to closing	Injury to closing	
Any type of health care provider				
Florida	15 mos.	26 mos.	41 mos.	36.6%
Missouri	18	28	45	40.0
Texas	16	29	45	35.6
Physicians or surgeons only				
Nevada	24 mos.	38 mos.	62 mos.	38.7%
Illinois	22	45	67	32.8

Note: Claim processing time shown only for those claims closed with an insurance payout. Claim processing time was not available for Maine and Massachusetts.

Methodology

Prior BJS reports on medical malpractice estimated that about 7% of medical malpractice lawsuits ended in a trial. (See *Tort Cases in Large Counties, 1992*.) BJS has provided detailed information about medical malpractice trials in several reports examining civil trial litigation in the Nation's 75 most populous counties. (See *Civil Trial Cases and Verdicts in Large Counties, 2001*; *Medical Malpractice Trials and Verdicts in the Large Counties, 2001*.)

These BJS reports did not examine the characteristics or outcomes of the estimated 93% of medical malpractice claims that settled or were closed without compensation prior to reaching the trial stage. This BJS special report expands the scope of inquiry about medical malpractice litigation by providing information on medical malpractice claims that settled prior to or during litigation, were dismissed or abandoned without compensation, or reached the trial stage.

Medical malpractice claim data limitations

Limitations apply to the medical malpractice claim databases summarized in this report. One limitation is the extent to which these medical malpractice databases contain claims in which no compensation was demanded by the claimant. While most medical malpractice insurance claims involve requests for compensation, it is possible that significant numbers of medical malpractice insurance claims do not involve any compensation demands.² Some insurance companies will open claims in response to medical procedures that resulted in injuries, irrespective of whether the injured party decides to pursue a claim. It was not possible to identify medical malpractice claims that did not involve demands for compensation.

The underreporting of medical malpractice insurance claims represents another limitation. The Departments of Financial and Insurance Regulation of the states providing data typically require that only licensed insurance companies submit closed claim medical malpractice data. The medical liability insurance market consists of other non-licensed entities and groups that provide medical liability insurance. These groups are not required to report closed claims medical malpractice data and include "self insured hospitals, hospitals that insure their employee physicians and surgeons, captive insurers, risk retention groups and surplus lines insurers."³ The percentage of unreported medical malpractice insurance claims was generally not discernible; however, the Missouri Department of Insurance estimated that 15% to 20% of claims go unreported every year for that state.⁴

²Bernard Black, Charles Silver, David Hyman, and William Sage. July 2005. "Stability Not Crises: Medical Malpractice Claim Outcomes in Texas, 1988–2002." *Journal of Empirical Legal Studies*. 2(2): 207–259.

³Department of Financial and Professional Regulation – Division of Insurance. 2006. *2005 Medical Malpractice Claims Report*. Springfield, IL: p. 3.

⁴Missouri Department of Insurance. 2005. *Missouri Medical Malpractice Insurance Report*. Jefferson City, MO.

Another limitation is that this study involves an examination of closed rather than opened medical malpractice insurance claims. As previously shown, a substantial amount of time can pass from the date of injury to the date that the medical malpractice claim is reported and subsequently closed by the insurance carrier. As a result of these time lags, this report should be viewed as presenting a picture of the past as opposed to the present medical malpractice insurance litigation environment.⁵

Another limitation is unknown variation in data quality. Some of these datasets have never been audited for consistency and accuracy. Medical malpractice claims often involve several defendants and insurance carriers filing multiple claims stemming from the same injury. While some states attempt to identify multiple claims that hail from the same incident, other states do not have procedures for identifying and purging these duplicate claims. This analysis was unable to determine the extent that duplicate claims were represented in these datasets.

The seven states also do not collect or report medical malpractice claim data in a uniform or consistent manner. Some states have more extensive medical malpractice data collection programs. Florida, Maine, Missouri, and Texas collect medical malpractice claims data involving physicians, surgeons, hospitals, nursing homes, dentists, and other health care providers. Illinois, Massachusetts, and Nevada only collect medical malpractice claim data involving physicians and surgeons.

Another important issue is whether the states collect data for claims that did not result in any compensation being awarded to the claimants. Florida and Massachusetts do not collect data on claims closed without an insurance payout. Texas collects only aggregate statistics on claims closed without an insurance payout or claims closed with insurance payouts of \$10,000 or less. Detailed medical malpractice data in Texas are collected only for those medical malpractice cases closed with insurance payouts of more than \$10,000.

For these reasons, this report should not be used to compare medical malpractice insurance litigation across the seven states. Rather, this report can be used to examine the general profile of medical malpractice insurance litigation.

⁵Neil Vidmar, Paul Lee, Kara MacKillop, Kieran McCarthy, and Gerald McGwin. 2004 – 2005. “Uncovering the Invisible Profile of Medical Malpractice Litigation: Insights from Florida.” *DePaul Law Review* 54: 315 – 356.

Definitions of terms

Claim characteristics

Insurance payouts: Insurance claim closed with claimant being compensated for losses sustained from malpractice injury. Losses can include economic (lost wages and medical expenses), noneconomic (emotional or pain and suffering), and attorney fees and costs.

Claimant: Party filing medical malpractice claim with insurance carrier seeking compensation for alleged injury committed by the negligent acts or omissions of physician, surgeon, or other health care provider.

Defendant: Physician, surgeon, or other health care provider named by claimant in medical malpractice insurance claim as responsible for the claimant’s injury.

Insurance carrier: Company that provides malpractice coverage to physician, surgeon, or other health care provider.

Loss adjustment: The amount insurance companies pay to their legal counsel for investigating and settling insurance claims, including defending a lawsuit in court. In some states loss adjustments have a broader definition and include other administrative costs for processing insurance claim.

State Insurance Commissioner: State insurance regulator responsible for managing the insurance industry and market for a particular state.

Claim disposition

Settled prior to lawsuit filed: Refers to insurance claims that are settled by the parties for specified dollar amounts prior to the claim being filed as a lawsuit in state or federal trial court.

Settled after lawsuit filed: Refers to insurance claims that are settled by the parties for specified dollar amounts after the claim is filed as a lawsuit in state or federal trial court but before the claim reaches a trial decision.

Trial verdict or judgment: Refers to insurance claims that are closed after a jury or judge (bench) trial has reached a verdict or judgment.

Claim processing time

Injury to reporting date: Time period between date health care provider’s malpractice act/omission caused injury to the claimant and date claimant files claim with the insurance carrier seeking compensation.

Reporting to closing date: Time period between date health care provider’s insurance carrier received medical malpractice claim to the date the health care provider’s

insurance carrier closed the claim. The closing date can refer to the date the insurance carrier paid out on the policy, the date the claimant abandoned the claim, or the date of administrative closure.

Appendix table A. Data fields provided in medical malpractice insurance datasets, by State

	Florida	Illinois	Maine	Massachusetts	Missouri	Nevada	Texas
Number of claims							
With payout	■	■	■	■	■	■	■
Without payout		■	■		■	■	
Gender	■	■			■	■	
Injury location	■	■			■		
Type of medical provider			■		■		■
Payout amount ^a	■	■	■	■	■	■	■
NAIC's injury severity scale	■	■			■		
Court disposition	■		■		■	■	■
Loss adjustment	■		■		■	■	■
Date of —							
Injury occurrence	■	■			■	■	■
Filing ^b	■	■			■	■	■
Closing ^c	■	■			■	■	■

^aPayout amounts in U.S. dollars.
^bDate filed with insurance company.
^cDate insurance company closed claim.

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The Bureau of Justice Statistics is the statistical agency of the U.S. Department of Justice. Jeffrey L. Sedgwick is director.

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